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NATIONAL WAR LABOR BOARD
BUREAU OF INTERNAL REVENUE
OFFICE OF ECONOMIC STABILIZATION

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Action on Cases for Review by National War Labor Board

The following cases, decided by regional war labor boards or commissions and reported in War Labor Reports, were acted on by the National Board in the period covered by this volume.

The cases are arranged alphabetically. Each case is identified by name and number and is followed by a statement of the region or commission by which the case was originally decided, the volume and page reference in War Labor Reports where the decision is reported, the party on whose petition appeal was taken, and the action taken upon it. If the review is on the Board's motion, it is so stated.

Star (★) indicates new items or items on which action was taken since prior appearances on this list.

Addressograph-Multigraph Co. (No. 111-11614-D). Petition for review of decision of Regional Board V (23 War Lab. Rep. 327) denied.

★ American Stores Co., et al. (No. 111-9081-HO). Petition for review of decision of Regional Board III (24 War Lab. Rep. 337 and 25 War Lab. Rep. XVIII) denied.

Atlas Powder Co. (No. 111-2204-D [7-D-297]). Decision of Regional Board VII (21 War Lab. Rep. 196) amended on company petition for review (26 War Lab. Rep. 142).

★ Atlas Powder Co. (No. 111-6033-D). Decision of Regional Board VII (21 War Lab. Rep. 60) amended on company petition for review (26 War Lab. Rep. 626).

Cherry Growers, Inc. (No. 111-11562-D). Petition for review of decision of Regional Board XI (24 War Lab. Rep. 119) denied. Union petition on issues of maintenance of membership and probationary employees.

City National Bank & Trust Co. of Chicago (No. 3866-D). Decision of NWLB (22 War Lab. Rep. 468) amended on company petition for review (26 War Lab. Rep. No. 2, XII).

★ Colorado Fuel & Iron Corp. (No. 14-632). Petition for review of decision of Regional Board IX (24 War Lab. Rep. 453) denied.

Douglas Aircraft Co., Inc. (Nos. 111-11182-D and 111-11183-D). Decision of Regional Board X (25 War Lab. Rep. 229) amended on petition for review (26 War Lab. Rep. 375).

Duplex Printing Press Co. (No. 111-8295-D). Petition for review of decision of Region XI (22 War Lab. Rep. 198) denied. Company petition on discontinuance of a 20-minute lunch period.

East Side Busses, Inc., et al. (No. 111-12585-D—Region XII). Decision of Region XII (25 War Lab. Rep. 181) amended on petition for review (26 War Lab. Rep. 93).

Edward Ermold Co. (No. 111-6453-D). Decision of Regional Board II (20 War Lab. Rep. 629) amended on company petition for review (26 War Lab. Rep. 296).

Ellis-Klatscher Co. (No. 111-9922-D). Decision of Regional Board X (21 War Labor Rep. 485) amended on company petition for review (26 War Lab. Rep. 161).

Fairbanks Co. (No. 111-10504-D). Petition for review of decision of Regional Board II (22 War Lab. Rep. 595) denied. Company petition on following issues: unfair procedure, negotiation of fixed relationship between piece work rates and base rates, payment of average hourly earnings for temporary transfers, six paid holidays, liberalization of vacations (computation of pay), and retroactive date.

F. H. Vahlsing, Inc. (No. 111-7180-D). Decision of Regional Board VIII (22 War Lab. Rep. 606) amended on joint petition for review (26 War Lab. Rep. 287).

General Motors Corp. (No. 111-4503-D). Decision of NWLB (22 War Lab. Rep. 484) amended on petition for review (26 War Lab. Rep. No. 1, XXXV).

Goodyear Tire & Rubber Co. (No. 111-10081-D). Petition for review of decision of Regional Board VI (23 War Lab. Rep. 89) denied.

★ Gulf Oil Corp. (No. 111-8901-D). Petition for review of decision of Regional Board II (23 War Lab. Rep. 425) denied.

J-M Service Corp. (No. 111-6983-D). Decision of Regional Board VII (17 War Lab. Rep. 809) amended on joint petition for review (26 War Lab. Rep. 239).

Laclede Steel Co. (No. 111-5602-D). Decision of Regional Board VII (23 War Lab. Rep. 595) remanded on company petition for review (26 War Lab. Rep. 438).

Marco Co., Inc. (No. 111-10764-D). Petition for review of decision of Regional Board III (23 War Lab. Rep. 684) denied. Company petition on issues of union recognition, union shop, and check-off.

Metz Mfg. Co. (No. 2179-D). Decision of NWLB (19 War Lab. Rep. 498) amended on petition for review (26 War Lab. Rep. No. 1, XXXVI).

Mines Equipment Co. (No. 111-7994-D). Decision of Regional Board VII (20 War Lab. Rep. 423) amended on joint petition for review (26 War Lab. Rep. 148).

★ Montana Power Co. (No. 111-14394-JB). Petition for review of decision of Regional Board IX (24 War Lab. Rep. 317) denied.

★ National Food Corp. (No. 111-12574-D). Petition for review of decision of Regional Board III (24 War Lab. Rep. 397) denied.

National Lead Co. (No. 111-10369-HO). Petition for review of decision of Regional Board VII (22 War Lab. Rep. 195) denied. Company petition on method of computation of vacation pay issue.

★ Nebraska Defense Corp. (Nos. 111-5323-D and 111-9267-D). Decision of Regional Board VII (16 War Lab. Rep. 210) denied.

Nelson Bros. Co. (No. 111-11191-HO). Petition for review of decision of Regional Board III (22 War Lab. Rep. 155) denied. Company petition on piece rates and vacation issues.

★ New Haven Foundry (No. 111-9811-D). Petition for review of decision of Regional Board XI (23 War Lab. Rep. 320) denied.

★ New York Bus Lines (No. 111-6994-D). Petition for review of decision of Regional Board II (21 War Lab. Rep. 609) denied. (Petition filed by Green Bus Lines, Inc.).

New York Herald-Tribune (No. 111-8188-D). Decision of Newspaper Commission (22 War Lab. Rep. 430) amended on petition for review (26 War Lab. Rep. 18).

Olympia Retail Merchants (No. 111-11213-D). Petition for review of decision of Regional Board XII (21 War Lab. Rep. 835) denied. Union petition on following issues: work-week, wages, and length of apprenticeship.

Olympic Club (No. 111-5605-D [10-D-373]). Decision of Regional Board X (20 War Lab. Rep. 605, 21 War Lab. Rep. 890) amended on joint petition for review (26 War Lab. Rep. 352).

Pettibone-Mulliken Corp. (No. 111-5387-D). Decision of NWLB (26 War Lab. Rep. 162) amending prior directive order (24 War Lab. Rep. 625).

Phillips Petroleum Co. (No. 111-11916-D). Petition for review of decision of Regional Board II (22 War Lab. Rep. 581) denied.

Phillips Petroleum Co. (No. 111-11460-D [7-D-1514]). Petition for review of decision of Regional Board VII (23 War Lab. Rep. 128) denied.

Potash Company of America (No. 111-8946-D). Decision of Non-Ferrous Metals Com. (19 War Lab. Rep. 406) amended on joint petition for review (26 War Lab. Rep. No. 2, XIX).

Reno & Sparks, Nevada Grocery Industry (No. 111-8880-D). Decision of Regional Board X (21 War Lab. Rep. 308) affirmed on petition for review (26 War Lab. Rep. 296).

Reynolds Metal Co., Inc. (No. 111-10661-HO [5-HO-1012]—Region V). Decision of Region V (24 War Lab. Rep. 360) amended on petition for review (26 War Lab. Rep. 95).

Sheffield Farms Co., Inc. (No. 111-10431-D). Petition for review of decision of Region II (23 War Lab. Rep. 290) denied. Company petition on night-shift bonus of 5 cents per hour ordered for work performed on second and third shifts.

Silver Bow Employers' Assn. (No. 111-11836-JB). Petition for review of decision of Regional Board IX (22 War Lab. Rep. 405) denied.

Southern Aircraft Corp. (No. 111-12882-D). Petition for review of decision of Regional Board VIII (23 War Lab. Rep. 459) denied. Company petition on issue of the meaning of the term grievance in contract.

★ Spicer Mfg. Co. (No. 111-10318-D). Petition for review of decision of Regional Board V (24 War Lab. Rep. 252) denied.

Sunshine Cab Corp. (No. 111-2710-D). Decision of Regional Board II (17 War Lab. Rep. 476) amended and interim decision of National Board (22 War Lab. Rep. 302) supplemented (26 War Lab. Rep. 349).

Timken Roller Bearing Co. (No. 111-14-682). Petition for review of decision of Regional Board V (24 War Lab. Rep. 376) denied. Company petition on following issues: standard maintenance-of-membership compulsory check-off, initiation fees and dues, denial of management clause, denial of no-strike clause, hours of work, leaves of absence for union officers, and intents and purposes (supervisory employees).

U. S. Potash Co. (Nos. 111-9728-HO and 111-9243-HO). Petition for review of decision of Non-Ferrous Metals Commission (19 War Lab. Rep. 406) denied.

Welfare & Recreational Assoc. of Public Bldgs. and Grounds (No. 111-11866-D). Petition for review of decision of Regional Board III (24 War Lab. Rep. 397) denied. Company petition on issue of retroactive date.

Western Pipe & Steel Co. of California (No. 111-5541-D). Petition for review of decision of Regional Board X (22 War Lab. Rep. 166) denied.

W. L. Maxson Corp. (No. 111-11295-D). Petition for review of decision of Regional Board II (23 War Lab. Rep. 604) denied. Company petition on incorporation of existing group insurance or hospitalization benefits in contract issue.

The President—

Executive Order No. 9607: Revocation of 48-Hour Minimum Workweek Order

Issued by the White House, Aug. 30, 1945

REVOKING EXECUTIVE ORDER 9301 OF FEB. 9, 1943, ESTABLISHING A MINIMUM WARTIME WORKWEEK OF FORTY-EIGHT HOURS

By virtue of the authority vested in me by the Constitution and statutes as President of the United States it is ordered that Executive Order 9301 [7 War Lab. Rep. XXII; WCDS 25] of February 9, 1943, establishing a minimum wartime workweek of forty-eight hours, be, and it is hereby revoked.

Office of Economic Stabilization—

Agricultural Labor: Procedure for Handling Cases in View of Lea Amendment

Statement Issued Sept. 4, 1945

I. Dispute Cases

The Conciliation Service will continue to handle disputes. In situations where dispute is not settled by the Conciliation Service, the Secretary of Labor may appoint a panel or investigator to submit a fact-finding report with recommendations. Such report and recommendations should be made public. The Secretary of Labor will consult with the Secretary of Agriculture with respect to procedures for handling these cases.

In the event that the parties accept any recommendation or otherwise reach agreement on any wage increase, such wage increase may be made without approval provided that such increase, unless it has been approved by the Director of Economic Stabilization before it is put into effect, will not be used in whole or in part as the basis for seeking an increase in price ceilings, or in the case of products being furnished under contract with a federal procurement agency, to increase the costs to the United States.

Pending dispute cases that WLB ceases to process by reason of the Lea Amendment [25 War Lab. Rep., No. 5, VII] will be returned to the Secretary of Labor for appropriate action under the above procedure.

II. Voluntary Cases

Voluntary wage increases may be made without prior approval, provided that such increases will not be used in whole or part as the basis for seeking an increase in price ceilings or for resisting otherwise justifiable reductions in price ceilings or, in the case of products or services being furnished under contract with a federal procurement agency, to increase costs to the United States. All other voluntary adjustments require approval. Application for such adjustments shall be made to the Secretary of Agriculture and may become effective only on the approval of the Director of Economic Stabilization.

The Department of Agriculture will handle enforcement matters involving the determination of any contravention of the wage stabilization program involving the affected employees and findings on the extent to which sanctions prescribed by the Act of Oct. 2, 1942 [25 War Lab. Rep., No. 3, V; WCDS 9], shall be applied by the appropriate government agencies.

Pending enforcement cases that WLB ceases to process by reason of the Lea Amendment will be transferred to the Secretary of Agriculture for appropriate action under the above procedure.

III. Committee on Definitions

The present inter-agency committee established by the Office of Economic Stabilization, composed of a representative from the Department of Agriculture, the Salary Stabilization Unit

of the Department of the Treasury, the War Labor Board, and the Office of Economic Stabilization will continue to consider the precise jurisdiction of the various agencies in particular cases, either dispute cases involving wage adjustments or voluntary cases. In the event the committee is unable to reach agreement, the issue shall be referred to the Director of Economic Stabilization and decided by him. The committee has functioned in the past to resolve all such questions of jurisdiction. When necessary, the advice of the Bureau of Internal Revenue, the Social Security Board, and the Comptroller General will be requested.

Wage Adjustments: Cases Involving Increased Cost to Government

Instructions to War Labor Board from OES Director William H. Davis, Issued Aug. 29, 1945

Pursuant to the authority vested in the Director of Economic Stabilization by Executive Orders 9250 [4 War Lab. Rep. VIII; WCDS 21], 9328 [7 War Lab. Rep. VII; WCDS 26], and 9599 [26 War Lab. Rep. No. 3, V], the following procedures shall hereafter apply to cost of production cases, and all directives or regulations of this office in conflict therewith are hereby rescinded.

1. In cases affecting the cost to the Government of a product or service being furnished under contract with a federal procurement agency, the Office of Economic Stabilization hereby grants advance approval to wage or salary adjustments predicated upon the Little Steel formula, the correction of substandards of living as defined by the War Labor Board, the minimum of the bracket of sound and tested rates, the rare and unusual procedures of Apr. 14, 1944 [15 War Lab. Rep. V; WCDS 72], or in accordance with the Mar. 8, 1945 [22 War Lab. Rep. No. 2, XXVIII; WCDS 537] and the Apr. 24, 1945 [23 War Lab. Rep., No. 4, V] directives.

Provided, however, that the appropriate procurement agency may request the Director of Economic Stabilization to review the directive order or ruling of the National War Labor Board prior to the date the ruling or order in any cost of production case becomes effective. The order or ruling of the National War Labor Board in the case of such requested review shall be effective only on the approval of the Director of Economic Stabilization.

2. In cases affecting the cost to the Government of a product or service being furnished under contract with a federal procurement agency, in which the order or ruling of the War Labor Board directs or approves wage adjustments to correct maladjustments or inequities which would interfere with the effective transition to a peacetime economy, in accordance with Executive Order 9599, the adjustments shall become effective only on the approval of the Director of Economic Stabilization.

War Labor Board—

Regulations, Part 803, General Orders Revoked

GENERAL ORDER NO. 4

Statement Issued Sept. 4, 1945, WLB Press Release B-2200-D; Revocation Dated Aug. 29, 1945.

The National War Labor Board has repealed General Order No. 4 [21 War Lab. Rep. XXXVIII, 26 War Lab. Rep. No. 3, XVI; WCDS 117].

GENERAL ORDER NO. 12-B

Statement Issued Sept. 4, 1945, WLB Press Release B-2200-D; Revocation Dated Aug. 20, 1945

The National War Labor Board and the Commissioner of Internal Revenue hereby revoke the following general order, which constituted a joint statement with respect to wage and salary adjustments by state, county, and municipal governments and agencies thereof:

Sec. 803-12-B: General Order 12-B [12 War Lab Rep. LII; WCDS 129]

Regulations, Part 803, General Orders Amended

WLB Press Release B-2200-D, Issued Sept. 4, 1945

GENERAL ORDER NO. 30

Adopted Feb. 18, 1943, and Amended Aug. 23, 1943, Nov. 11, 1944, May 23, 1945, and Aug. 30, 1945

[ED. NOTE: Supersedes 24 War Lab. Rep. No. 3, XII.]

Sec. 803.30 Adjustments in Wage and Salary Rates Below 55 Cents per Hour

Increases in wage and salary rates which do not bring such rates above 55 cents per hour may be made without the approval of the National War Labor Board although the increase will be used in whole or in part as the basis for seeking an increase in price ceilings or for resisting otherwise justifiable reductions in price ceilings or, in the case of products or services being furnished under contract with a federal procurement agency, will increase the cost to the United States.

GENERAL ORDER NO. 36

Adopted June 6, 1944, and Amended June 14, 1944, July 18, 1944, Aug. 27, 1944, Aug. 20, 1945, and Aug. 27, 1945

[ED. NOTE: Supplements 26 War War Lab. Rep. No. 4, IX.]

Sec. 803.30 Adjustments in Wages and Salaries in Hawaii

* * *

Resolutions of Hawaii Territorial War Labor Board

* * *

By virtue of and pursuant to the authority conferred on it by General Order No. 36 of the National War Labor Board, the Territorial War Labor Board for Hawaii has adopted the following resolution (approved by National Board Aug. 27, 1945):

General Resolution No. 16

(a) Employers may, through collective bargaining with duly certified or recognized representatives of the employees involved or, if there is no such representative, by voluntary action, make wage or salary increases without the necessity of obtaining approval therefor, upon the condition that such increases will not be used in whole or in part as the basis for seeking an increase in price ceilings or for resisting otherwise justifiable reductions in price ceilings or, in the case of products or service being furnished under contract with a federal procurement agency, will not increase the cost to the United States.

(b) The provisions of Par. (a) above shall be effective as of Aug. 18, 1945, but this shall not preclude the selection by the party or parties of any earlier date as the effective date of the wage or salary increase. The provisions of this general resolution shall not, however, operate as an approval of any wage or salary increase placed into effect before Aug. 18, 1945, and prior to receipt of any approval required by the Stabilization Act of Oct. 2, 1942, or the orders or regulations issued thereunder.

(c) Wage or salary increases referred to in Par. (a) above may be made, notwithstanding any previous denial or modification of an application for approval thereof by the National War Labor Board or its agencies.

(d) The provisions of this general resolution shall not apply to the the building and construction industry until further notice.

WLB: Interpretation of General Order No. 40 *

Adopted by War Labor Board Aug. 27, 1945. WLB Press Release B-2200-C, Issued Sept. 1, 1945

1. All nonbasic wage or salary adjustments or changes in working conditions which result in an increase in earnings (except those increases which are covered specifically by other general orders) are wage or salary increases within the meaning of this general order.

2. Increases granted by arbitration awards are wage or salary increases within the meaning of this general order.

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* ED. NOTE: For the provisions of General Order No. 40, see 26 War Lab. Rep. No. 3, X.

Stabilization Violations: Procedure for Processing

NWLB Instructions to Regional Boards and Commissions, WLB Press Release B-2211, Issued Aug. 31, 1945

Regional war labor boards have been instructed to complete processing as quickly as possible pending cases involving alleged violations of the national wage stabilization law in order that such unsettled matters may not delay employers in obtaining prompt and definite liquidation of their war contracts and of their potential liabilities, the National War Labor Board announced today.

The National Board unanimously instructed the regional boards to use existing WLB machinery for handling violation cases but to streamline the procedures as much as possible. It also requested the regions to take into account the effects of the change in wage policies and to initiate new violation cases only in connection with (1) enforcement of remaining wage stabilization controls, (2) development of evidence of violation which comes to the attention of regional staffs or which may be furnished to them, and (3) voluntary disclosures of violation.

Since present wage policy permits voluntary increases to be put into effect where no price relief is requested, the enforcement divisions of the boards will no longer be concerned with the necessity for employers who have been in violation to roll wages back to the legally stabilized rate.

Telephone Industry: Voluntary Wage Adjustments Involving Possible Rate Relief

Policy of National Telephone Commission, WLB Press Release B-1888T, Issued Aug. 30, 1945

The National Telephone Commission of the National War Labor Board today moved to dispose of, as rapidly as possible, all pending voluntary applications for approval of wage adjustments following a conference with the Office of Economic Stabilization concerning certain cases involving the question of possible rate relief.

The cases in question are those voluntary applications in which the employer has stated that he has no intention of seeking rate relief but was reserving the right to include the proposed wage increases as part of the company's expenses in any future proceedings before state and federal agencies which regulate utility rates.

It was determined that these cases will be considered by the Commission in the same light as cases in which an employer stated that he would use the proposed increase as a basis for seeking an increase in ceiling price and will be referred to the Office of Economic Stabilization if the Commission approves an increase.

Salary Stabilization Unit—

Salary Adjustments: Revised Policy for Approval

Statement by Joseph D. Nunan, Jr., Commissioner of Internal Revenue, Issued Aug. 22, 1945

Joseph D. Nunan, Jr., Commissioner of Internal Revenue, acting in accordance with Executive Order No. 9599 [26 War Lab. Rep., No. 3, V] issued by the President on Aug. 18, 1945, today modified his salary stabilization rules to permit any employer who desires to increase the salary of any employee to do so immediately subject to the following conditions:

(a) The salary increase will not be used, in whole or in part, as the basis for seeking an increase in price ceilings, or

(b) The salary increase will not be used, in whole or in part, for resisting otherwise justifiable reductions in price ceilings, or

(c) In the case of products or services being furnished under contract with a federal procurement agency, the salary increase will not increase the cost to the United States.

If these conditions are met, the em-

ployer may proceed to grant the salary increase without any application for approval or any other formality whatsoever. Otherwise, the employer must apply for approval, in the usual manner, to a regional office of Salary Stabilization Unit, Bureau of Internal Revenue.

The new policy applies to salaries, bonuses, commissions, fees, incentive pay, and all other types of compensation.

Where employers already have on file applications for increases which are consistent with the new policy, the employers may proceed at once to grant the increases without waiting for action on their applications. An increase consistent with the new policy also may now be made by an employer who has heretofore received disapproval of an application filed under the old regulations. The granting of these increases, however, does not validate any salary payments made heretofore in contravention of the former regulations. Therefore, enforcement action will continue to be taken against past violators.

Under the salary stabilization regulations, which are being revised in accord with the new policy, the Commissioner has authority over all salaries of $5,000 or more per year and also any salaries of less than $5,000 when paid to administrative, professional, or executive employees who are not represented by labor organizations. These changes in the salary stabilization regulations do not, however, change in any way the Commissioner's authority under the income tax and excess profits tax regulations to disallow deductions of unreasonable salary payments. This authority under tax regulations has always been a protection against tax avoidance and is not connected with the wartime measures to prevent inflation.

Cases Previously Published in Which Opinions Have Subsequently Been Issued

CARBORUNDUM CO.—
Decision of Regional Board II (New York)

In re THE CARBORUNDUM COMPANY [Niagara Falls, N. Y.] *and* UNITED GAS, COKE AND CHEMICAL WORKERS OF AMERICA, LOCAL 12058 (CIO). Case No. 111-10501-D, May 1, 1945 (opinion dated July 2, 1945).*

Opinion of the Board

July 2, 1945

GELLHORN, Public Member:—On May 1, 1945, this Board ordered that the company should compute its employees' piecework earnings on a daily rather than a weekly basis. The action so taken was consistent with previous holdings of the National Board (see, e. g., Standard Register Company, 21 War Lab. Rep. 745 (1945); Big Four Packing Companies, 24 War Lab. Rep. XV (1945)) and of this Regional Board (see, e. g., Precision Castings Company, 24 War Lab. Rep. 247 (1945); Utica Knitting Corporation, Case No. 111-7718-D (Jan. 24, 1945)).

Subsequently, the company petitioned for reconsideration of our order. Because the petition set forth evidential matter which perhaps had not been fully reflected in the panel report, we granted the petition. Upon full reconsideration the Board, with industry dissenting, has now reaffirmed its original decision.

The company's objections to daily rather than weekly computation of incentive earnings are threefold:

1. Calculation of piecework earnings on a daily basis is allegedly impracticable because of this company's methods and scheduling of production;

2. The daily computation of earnings would necessitate additions to the clerical force and would thus increase costs;

3. Pieceworkers, by "banking" and other devices, might distort their daily labor production in order to average higher earnings.

First: The company asserts that, because productive cycles vary in length, the daily computation of incentive earnings would require the "splitting" of runs and jobs of a custom nature. Its contentions in this regard do not, however, establish that daily computations are impracticable, for the

* ED. NOTE: For the directive order in this case, see 24 War Lab. Rep. 237.

company has specifically conceded that this very same "splitting" occurs under its present system at the end of each week and, indeed, at the end of every shift "in the case of certain workers in the wheel finishing department where the demands of production in certain instances required the addition of an afternoon shift whose operators take up work where the day crew leaves off." In short, the company has failed to demonstrate that daily "splits" are impossible; the objection to them is that they require "multiplying the work of checking approximately six-fold."

Secondly: This alleged increase in administrative work would, according to the company, necessitate the employment of approximately 70 additional persons. The number of employees in the bargaining unit involved in the present dispute is 4,409.

As to the added expense of administration involved in making daily computations, the panel report contains the following significant observation:

"The public panel member, who has had experience in timekeeping and payroll methods, examined the company's methods of transferring information from time records to payrolls and believes that the clerical effort and expense, which would be required to figure the guarantees on a daily basis, would not be a serious obstacle."

Indeed, the panel stated the belief that, if this were the only objection, "it is quite possible that certain benefits to the production, which would arise out of figuring the time on a daily basis, would more than offset the added clerical cost."*

The majority of this Board has, for the reasons indicated by the panel, rejected the company's argument that prohibitive expense would be involved in making current measurements of work completion.

Thirdly: The company's final objection to the Board's order is, as stated by the panel report, that daily computation of incentive earnings "would make it possible for unscrupulous workmen to cheat the company by manipulating their time and the count of pieces turned in on various days." This argument was accepted by the panel, which recommended denial of the union's request because it "believes that the company has good cause to fear that this change might result in manipulation of the time. * * * Combating fraud is an ever present problem in any factory which has an incentive system and is particularly difficult in a large organization like Carborundum which processes thousands of small orders weekly."

The mere possibility that "unscrupulous workmen" might "cheat the company" is not adequate ground for withholding from honest workmen the payments their efforts have earned. This Board knows that an entirely conscientious incentive worker who has earned a bonus on one day may fail on the next day to duplicate his creditable performance because of mechanical or supply breakdowns, change of assignment, or other facts not attributable to him. In the judgment of the majority of this Board, there is patent inequity in denying him the incentive pay his day's production warrants. In Precision Castings Company, 24 War Lab. Rep. at 248, we said in words which are equally applicable here and which aptly summarize our present conclusion:

"The intended objective of incentive systems is the fair compensation of workers for increased effort. That objective cannot be achieved if the rewards for accelerated productivity are to be snatched away merely because at a later day, through no fault of the worker, the same pace of production is not maintained. We do not minimize the difficulties of adequate supervision of the company's operations, nor do we deny the possibility that improper manipulation of production reports may occur if adequate supervision is lacking. We believe, however, that control over production records to assure their accuracy is a responsibility of the management which installed the piecework system. Even though that responsibility may be an oppressive one, it would be inequitable to relieve management of its burdens at the expense of the incentive workers."

* These "certain benefits to the production" were no doubt the ones brought to the panel's notice by the union, which had argued at the hearing "that, in the case where a worker may have failed to earn his guarantee in the first three or four days of the week, there is little incentive for him to turn out high production on the last day or days since he knows he must first offset his previous failures to earn his guarantee before he will benefit by any bonus."

Memorandum Decisions of National War Labor Board

BERGEN POINT IRON WORKS—

In re BERGEN POINT IRON WORKS [Bayonne, N. J.] *and* UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, LOCAL 446 (CIO). Case No. 111-3644-D, June 15, 1945.

Majority decision of Board amending order of Regional Board II (New York). Public members concurring: Lloyd K. Garrison, Edwin E. Witte, Nathan P. Feinsinger, and Lewis M. Gill. Industry members concurring: Vincent P. Ahearn, Clarence O. Skinner, Fred Climer, and Earl N. Cannon. Labor members dissenting: Neil Brant, Carl J. Shipley, Elmer E. Walker, and James A. Brownlow.

[ED. NOTE: The issue reviewed by the Board on its merits in this case is a merit progression schedule. The Board's order is identical to its precedent-setting decision in the case of the Rane Tool Co., Inc., at 24 War Lab. Rep. 482.]

CARLOVA, INC.—

In re CARLOVA, INC. [St. Louis, Mo.] *and* UNITED GAS, COKE & CHEMICAL WORKERS OF AMERICA, LOCAL 130 (CIO). Case No. 111-9306-D, June 22, 1945.

Majority decision of Board remanding order of Regional Board VII (Kansas City). Public members concurring: George W. Taylor, Lewis M. Gill, Jesse Freidin, and Lloyd K. Garrison. Employer members dissenting on acceptance of union petition and Par. I: Charles S. Roberts, Walter Knauss, J. Holmes Davis, and Earl Cannon. Labor members dissenting on Par. II: Van A. Bittner, Delmond Garst, Elmer E. Walker, and James A. Brownlow.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted, in so far as it relates to the issue of wages, the petition filed by the union for review of the Seventh Regional War Labor Board's directive order dated Jan. 11, 1945, in the above entitled case and having reviewed the merits of the case with respect to this issue, hereby orders:

I. The issue of wages is hereby remanded to the Seventh Regional War Labor Board for reconsideration.*

II. The remainder of the petition for review is denied.

III. Subject to the provisions of Par. I above, the terms and conditions of employment set forth in the Seventh Regional War Labor Board's directive order of Jan. 11, 1945, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby as ordered by the National War Labor Board.

CONSOLIDATED BADGER COOPERATIVE—

Decision of National Board

In re CONSOLIDATED BADGER COOPERATIVE [Shawnee, Wis.] *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (AFL). Case No. 111-4999-D, May 31, 1945 (made public Aug. 12, 1945).

Majority decision of Board amending decision of Regional Board VI (Chicago). Public members concurring: Dexter Keezer and Nathan P. Feinsinger. Labor members dissenting

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* ED. NOTE: The company manufactures cosmetics. The Regional Board directed maintenance of the present 45-cent starting rate but ordered an increase to 50 cents after 3 months instead of the present rate of 47½ cents after 3 months and 50 cents after 9 months.

The union requested higher rates on the basis of pay in the drug industry. The panel recommended denial of the request on the grounds that there were no brackets for the cosmetic industry in the area and that no comparison could be made with pharmaceutical, chemical, or heavy industries.

The National Board found that the Regional Board failed to follow the "isolated plant" policy of either (1) widening the labor market area to include camparable plants or (2) comparing this company's rates with bracket rates for similar jobs in other industries in the local area.

The Board also ordered reconsideration of rates under 65 cents for wash machine operators and hand truckers since 65 cents had been previously approved for those classifications. (Information supplied by WLB staff.)

on acceptance of petition with respect to night-shift premium: Robert J. Watt and Van A. Bittner. Employer members dissenting on Pars. I, III, and IV: Fred Climer and Hoey Hennessy.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted, in so far as it relates to general wage increase, hiring rate, and night-shift differential, the petition filed by the company for review of the Sixth Regional War Labor Board's directive order of Feb. 1, 1945, and having reviewed the merits of the case with respect to these issues, hereby takes the following action:

I. General Wage Increase. The said directive order of Feb. 1, 1945, is affirmed in this respect.*

II. Hiring Rate. (1) The 55-cent minimum hiring rate ordered by the Regional Board is affirmed. (2) If the company establishes the fact, as alleged, that the 61.4-cent hiring rate for males which has been in effect is a legal rate, that rate shall not be disturbed.†

III. Night-Shift Premium. The said directive order of Feb. 1, 1945, is hereby modified to the extent that the night-shift premium shall be three cents an hour.‡

IV. Those portions of the petition for review which relate to the issues of overtime and retroactivity are hereby denied.

V. Subject to the provisions of Pars. II and III above, the terms and conditions of employment set forth in the Sixth Regional War Labor Board's directive order of Feb. 1, 1945, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

CONSOLIDATED VULTEE AIRCRAFT CORP.—

In re Consolidated Vultee Aircraft Corporation [Fort Worth, Tex.] and International Association of Machinists, Lodge 776 (AFL). Case No. 111-1468-D, Aug. 4, 1945.

Interpreting 20 War Lab. Rep. 328.

Unanimous decisions of Board interpreting prior order. Public members concurring: Dexter M. Keezer and Nathan P. Feinsinger. Labor members concurring: Paul Chipman and Delmond Garst. Employer members concurring: Earl Cannon and S. Bayard Colgate.

Order of Interpretation

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having considered the union's request for interpretation of the Board's directive order dated Nov. 30, 1944 [20 War Lab. Rep. 328], hereby makes the following ruling:

The third sentence of the third paragraph of the Board's directive order dated Nov. 30, 1944, shall be interpreted as follows:

The employer shall establish for such employee a review date at each interval of six (6) months from his date of hire and shall grant him a merit review at that time. When it is found to be impracticable to review the employee on this specific date, he shall be reviewed as nearly as possible to his established review date. Any increase in his rate resulting from such review shall be effective as of the payroll period nearest to his established review date.

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* Ed. Note: The Regional Board directed a general increase of five cents per hour on the basis of going wage rates. (Information supplied by WLB staff)

† Ed. Note: The existing hiring rate for male workers is 61.4 cents and for female workers 41 cents. The Regional Board directed a minimum of 55 cents on the ground that the higher rate currently paid to men was not permissible under the stabilization program and that the female rate was substandard. The question of a possible violation of the stabilization program with respect to the male rate was referred to the Legal Division. (Information supplied by WLB staff)

The company appealed for review, protesting the decrease in male rates and the increase in female rates. It contended that the scale for male workers was proper and legal under the stabilization policy.

‡ Ed. Note: The Regional Board's award of a five-cent shift premium is reduced to three cents, the amount originally demanded by the union. (Information supplied by WLB staff)

MAMMOTH BLUE GEM COAL CO., ET AL.—

In re MAMMOTH BLUE GEM COAL COMPANY [Williamsburg, Ky.]; JELLICO COAL MINING COMPANY [Mountain Ash, Ky.]; and CATLIFF COAL COMPANY [Catliff, Ky.] *and* UNITED MINE WORKERS OF AMERICA, DISTRICT 19 (CIO). Cases No. 111-9945-D, 111-9946-D, and 11-9865-D, July 25, 1945.

Majority decision of Board remanding order of Regional Board V (Cleveland). Public members concurring: Nathan P. Feinsinger and Lloyd K. Garrison. Labor members concurring: Raymond McCall and Carl J. Shipley. Employer members dissenting: Earl Cannon and Charles S. Roberts.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having considered the petitions filed by the parties for review of the Fifth Regional War Labor Board's directive order of Feb. 2, 1945, in the above entitled case and having accepted the union petition and reviewed the merits of the case with respect to the issue of wages, hereby takes the following action:

I. The wage issue is hereby remanded to the Fifth Regional Board for application of sound and tested rates to the day men in those mines.*

II. The company petition for review is hereby denied.

* ED. NOTE: The Regional Board ordered a rate of 80 cents an hour for day men in these coal mines despite the fact that the minimum rate of outside and inside classifications established in the Southern Appalachian scale is 85.7 cents. The reason for the Regional Board's decision was the existence of an historical differential between the rates of the instant companies and other companies. Present minimum rates for day men, although reported by the Regional Board's panel at 60 cents, are 70 cents in two of the mines involved and 67.5 cents in the third.

In appealing the Regional decision, the union contended that it was a contravention of Board policy for the Regional Board to refuse to apply the minimum going rates for the area, which are represented by the Southern Appalachian agreement, merely because of a history of low rates in the instant mines.

The Board accepted the union's reasoning, especially as face men in the same mines had been given the Southern Appalachian minimum scale. (Information supplied by WLB staff)

ROSSLYN HOTEL LAUNDRY—

In re ROSSLYN HOTEL LAUNDRY [Los Angeles, Calif.] *and* AMALGAMATED CLOTHING WORKERS OF AMERICA, LOCAL 357 (CIO). Case No. 111-6525-D, June 4, 1945 (made public Aug. 15, 1945).

Majority decision of Board vacating prior order. Public members concurring: Lewis M. Gill and Dexter M. Keezer. Employer members concurring: Earl N. Cannon and Lee H. Hill. Labor members dissenting: Delmond Garst and Raymond McCall.

Supplementary Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board on its own motion hereby takes the following action:

Par. II of the National War Labor Board's directive order dated Dec. 14, 1944, in the above entitled case is hereby vacated.†

† ED. NOTE: The Board's order of Dec. 14, 1944, was a routine denial of petition for review of the Regional Board action. As is customary in such cases, the second paragraph of that order required that the terms and conditions set forth in the Regional Board's directive order be incorporated in a signed agreement between the parties. The company subsequently refused to sign a contract, and the Regional Board issued a compliance order.

The company is a laundry engaged wholly in intrastate commerce. The union has never been certified or recognized as bargaining agent of its employees.

The Board's current action in vacating the requirement that the parties sign a contract, therefore, is consistent with its policy in such intrastate cases as set forth in its resolution of July 12, 1944, 17 War Lab. Rep. iii; WCDS 195. (Information supplied by WLB staff.)

Personnel Appointments of the National War Labor Board and Subsidiary Agencies

NATIONAL BOARD

Issued Aug. 22, 1945

The National War Labor Board has appointed Abram H. Stockman, director of enforcement, as a chairman of the Board's Appeals Committee.

Peter Seitz, a chairman of the Appeals Committee, was named associate director of disputes, and Martin Kurasch, attorney for the Ninth Regional WLB at Denver, was made assistant general counsel in charge of enforcement for the National Board.

Mr. Stockman was at one time with the Office of Price Administration, where he was chief of enforcement planning operations for the New York Region. He was formerly research director of the New York Law Society and had acted as consultant for the Administration Office of the United States Courts. He also has written and collaborated on several pamphlets on the administration of civil justice.

Mr. Seitz has been in government service since 1934, first with the National Recovery Administration, then with the general counsel's office of the Social Security Board, later in the office of the solicitor of the Labor Department. Since February 1945, he has been a chairman of the Board's Appeals Committee.

Mr. Kurasch, a graduate of Rutgers University and Columbia Law School, has been attorney for the Ninth Regional Board since it was created in March 1943. He formerly was in the office of the solicitor at the Department of Agriculture.

Bernard L. Cushman was named chairman of the New Case Committee. He will also continue as assistant general counsel in charge of the disputes, opinions, and interpretations sections.

Issued Aug. 25, 1945

Clarence O. Skinner, alternate industry member of the National War Labor Board and Washington manager of the Automotive and Aviation Parts Association, has been appointed as a regular industry member of the NWLB by the President, it has been announced. He succeeds Horace B. Horton, who resigned to return to private business as president of the Chicago Bridge and Iron Corporation, Chicago.

The President also appointed Earl N. Cannon, vice-president of the American Trucking Association and vice-president of the Yellow Truck Lines, Inc., Madison, Wis., as an alternate industry member. Mr. Cannon has been a substitute industry member.

Mr. Skinner was born Feb. 20, 1895, in Lansing, Mich. He was graduated from the Engineering School, University of Michigan, in 1917 and was a first lieutenant of the Rainbow Division, AEF, 1917 to 1919. From 1920 to 1923 he rose to captain, major, and lieutenant colonel.

From 1923 to 1933, when he became manager of the Automotive and Aviation Parts Association at Detroit, he was with the Motor Wheel Corporaion, Lansing. He was with the General Motors Corporation during 1940 and 1941, leaving to assume his present position as Washington manager of the parts association. He served as an industry representative of the NWLB's Appeal and Review Committee from 1942 to 1944 before becoming a substitute industry member of th Board. His home is in Ann Arbor, Mich.

Mr. Cannon was born in Delavan, Wis., and is a graduate of the University of Wisconsin Law School. He is a member of a Madison, Wis., law firm. Before becoming a member of the Board itself, he was an industry member of the WLB's Trucking Commission. He is also a consultant for the Office of Defense Transportation.

Issued Aug. 31, 1945

Resignation of Dexter M. Keezer as a public member of the National War Labor Board, effective Sept. 1, has been accepted by the President.

A member of the NWLB since February, 1944, Mr. Keezer is leaving to join the economic staff of a publishing firm in New York City.

He came to Washington in 1942, having been president of Reed College at Portland, Ore., and was a deputy administrator of the Office of Price Administration for a year and a half.

For six months he was economic advisor for the Mission of Economic Affairs at the United States Embassy in London.

REGIONAL BOARD II

Issued Aug. 22, 1945

Robert Feinberg, a chairman of the Appeals Committee of the National Board, has been made vice-chairman of the Second Regional WLB at New York.

Mr. Feinberg, formerly assistant general counsel of the National Board, has been associated with the Board since November 1942. Prior to that date, he practiced law in New York City, specializing in labor relations.

REGIONAL BOARD III

RWLB Press Release 3-1508

Joseph Bell, formerly Regional attorney of the Third Regional War Labor Board, has been appointed a vice-chairman of that Board, succeeding Dr. Frank C. Pierson.

Succeeding Bell as Regional attorney is Maurice Louik, who has been supervising enforcement attorney for the Board.

Dr. Pierson, who from September 1943 to December 1944 had been wage stabilization director of the RWLB, resigned recently as vice-chairman to return to full-time duty as associate professor of economics at Swarthmore College. He will continue to act as a public member of the Board.

RWLB Vice-Chairman Bell is a native of Philadelphia and was graduated with honors both from the University of Pennsylvania and the University of Pennsylvania Law School. He became associated with the Third Regional War Labor Board as chief enforcement attorney in March 1943. During the five years preceding, he had been engaged in general practice of law in Philadelphia.

Louik, the new Regional attorney, was born in Pittsburgh and educated in the public schools there and in Uniontown, Pa. He is a graduate of the University of Pittsburgh and the University of Pittsburgh Law School.

Louik became a member of the Board's legal staff on Dec. 1, 1943, as enforcement and trial attorney and subsequently advanced to supervising enforcement attorney. As enforcement attorney he conducted hearings in wage stabilization violation cases and also procured voluntary settlements in such cases, aggregating more than $1,000,000 in disallowments of unauthorized payroll costs.

WAR SHIPPING PANEL

Issued Aug. 22, 1945

Arthur Ross, chairman of the New Case Committee, has been appointed vice-chairman of the War Shipping Panel.

Mr. Ross was a hearing officer in the Automotive Section of the Eleventh Regional WLB at Detroit from June 1944 until his appointment to the New Case Committee in January 1945. He had previously been employed by the War Manpower Commission and had been a lecturer on industrial relations at George Washington University.

SHIPBUILDING COMMISSION

Issued Aug. 22, 1945

The National War Labor Board has appointed Phillips L. Garman, associate director of the Disputes Division, as co-chairman of the Board's Shipbuilding Commission.

Mr. Garman, prior to becoming associate director of the Disputes Division of the NWLB, was assistant director of the division and chief of the Strikes Section and a former chief of the operations branch of the Labor Production Division of the War Production Board. He has been in govment since April 1941. He is a graduate of the University of Wisconsin and has been engaged in labor relations and labor research work for several years.

LABOR DISPUTE SETTLEMENTS

WAGE & SALARY STABILIZATION

War Labor Reports

Volume 26

Cited: 26 War Lab. Rep.

TEXAS MINING & SMELTING CO.—

Decision of National Board

In re TEXAS MINING AND SMELTING COMPANY [Laredo, Texas] *and* INTERNATIONAL UNION OF MINE, MILL, AND SMELTER WORKERS, LOCAL 412 (CIO). Case No. 111-8144-D [8-D-251], Dec. 21, 1944 (made public Aug. 29, 1945).

WAGES—SUBSTANDARD RATES—Elimination of substandards—Correlative adjustments.

Company should increase minimum hourly rate from 47 to 55 cents to eliminate substandards and should increase all higher rates by 8 cents per hour rather than by tapered amounts since very narrow differentials exist among interrelated job classifications. Regional Board's order establishing 50-cent minimum rate and tapered correlative adjustments is modified accordingly. Case is also remanded to Regional Board for any further action justified by case's having been certified as rare and unusual one.

For other rulings see Index-Digest 295.201 and 295.260 in this or other volumes.

Majority decision of Board amending directive order of Regional Board VIII (Dallas). Public members concurring: Edwin E. Witte and Jesse Freidin. Employer members dissenting on Pars. I and II: William Maloney and S. Bayard Colgate. Labor members dissenting on Par. III: Delmond Garst and James A. Brownlow.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulatons issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having considered the petitions filed by the parties to the above case for review of the Eighth Regional War Labor Board's directive orders of Jan. 2, 1945, and Mar. 6, 1945, and having accepted that part of the union petition which relates to the wage issue and having reviewed the merits of the case with respect to this issue, hereby takes the following action:

I. Sec. 2 of the said directive order of Jan. 2, 1945, is hereby modified to provide for payment of a minimum hourly rate of 55 cents and an equal 8-cent increase across-the-board. The case is remanded to the Eighth Regional Board for such further action with respect to the issue of wages as it may deem necessary in the light of certification of this case as rare and unusual.*

II. The company petition for review of the said order of Jan. 2, 1945, with respect to the issues of wages, vacations, and check-off and for review of the order of Mar. 6, 1945, with respect to shift premiums and retroactivity, is hereby denied.

III. The union petition for review of the order of Jan. 2, 1945, with respect to sick leave, is hereby denied.

IV. The union request for an oral hearing is denied.

V. Subject to the provisions of Par. I above, the terms and conditions of employment set forth in the Eighth Regional War Labor Board's directive orders of Jan. 2, 1945, and Mar. 6, 1945, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

This action was taken on Aug. 13, 1945, and was based on the national wage stabilization policy in effect on that date.

Directive Order of Regional Board VIII (Dallas)

Jan. 2, 1945

I. The Regional War Labor Board for the Eighth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations, issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of em-

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* ED. NOTE: The Regional Board's action represented an application of the 50-cent substandards breaking point in effect at the time of its decision. The Regional Board directed tapered increases varying from 3 cents to one-half cent an hour in rates paying between 47 and 72 cents. The National Board applied the 55-cent substandards breaking point which was in effect at the time of its decision. The Board also determined that tapering of increases in rates above 55 cents was not appropriate because differentials between job rates were very narrow. (WLB Press Release B-2208.)

ployment shall govern the relations between the parties:

Sec. 1. Check-Off

The Board directs that the company shall check off monthly dues of all employees who are members of the union and instructs that the following form be used in connection therewith:

"The company shall deduct from their wages and turn over to the proper officials of the Union, initiation fees and union dues of such members of the Union as individual and voluntarily certify in writing that they authorize such deductions, said authorization to be in the following form:

"To Texas Mining and Smelting Company: I hereby authorize you to deduct from my wages the sum of ———dollars ($———) per month and remit said sum monthly to the International Union of Mine, Mill, and Smelter Workers, Local 412 (CIO), of which I am a member, as my membership dues. I understand that this assignment is voluntary and that I may revoke it at any time in writing and shall put no liability of any kind upon The Texas Mining and Smelting Company by virtue of their honoring in good faith this assignment and authorization.

"Employee

"Witness

"Date

"The Union shall deliver to the Company such voluntarily executed authorization before the 15th day of any one month, and the Company shall deduct the union dues for that particular month and for all following months until such authorization is revoked in writing out of the last payroll period of such month and pay such union fees so deducted to the treasurer of the local Union."

Sec. 2 Wages

The Board directs that the company shall place in force and effect, retroactive to Mar. 1, 1944, such date being the expiration date of the last contract between the parties, the following wage rates:

Classification	Hourly Rates
Patio	$0.50
Helper (Oxide Furnace)	.50
Janitor	.50
Helper (Carpenter)	.52
Helper (Blacksmith)	.52
Helper (Storekeeper)	.52
Helper (Machine Shop)	.52
Labor (Slag Crushing)	.52
Labor (Bricutting)	.52
Man to Metal Disposal	.52
Helper (Hoistman)	.52
Helper (Blast Furnace)	.52
Helper (Furnace Tapper)	.525
Weighman Helper	.525
Helper (Oxide Packing Unit)	.545
Weighman (Bricutting)	.505
Helper (Starring Furnace)	.545
Helper (Doubling Furnace)	.545
Charge Car Man	.545
Helper (2nd Class Bricklayer)	.555
Truck Driver	.555
Painter	.555
Helper Bench (Assay Office)	.555
Weighman (Blast Furnace)	.555
Operator (Oxide Packing Unit)	.565
Operator (Oxide Furnace)	.565
Furnace Man in Charge (Starring Furnace)	.57
Furnace Man in Charge (Doubling Furnace)	.57
Furnace Tapper (Blast Furnace)	.57
Motorman to Slag Disposal	.57
Helper (Assay Office)	.59
Bricutting Operator	.60
Hoistman	.60
Operator, Slag Crushing	.61
First Class (Machine Shop)	.725
Carpenter	.78
Bricklayer	.78
Blacksmith	.78

Any employee who has either quit or been discharged since said date shall receive the amount of the increase for his classification up to the date on which employment with the company terminated. The company and the union shall promptly send a joint letter to each such employee at his last known address, advising him of his rights under this provision. The

employee must mail his written application for retroactive pay to the company within 60 days after the date of mailing of the joint letter. The company may voluntarily make the payment in any case even though the 60 days have elapsed. The company shall be obligated to make the payment, if good cause is shown for the application being delayed beyond the 60 days. Failure to make the payment where good cause for the delay is alleged may be taken up by the union as a grievance. The 60-day limitation shall not apply to employees who have become members of the armed forces of the United States, either before or within 60 days after the mailing of the joint letter.

Sec. 3. Sick Leave

The request of the union that the Board direct the company to place a "Sick Leave" provision in the contract between the parties is hereby denied.

Sec. 4. Minimum Annual Take-Home Pay

The request of the union that the Board direct the company to place a "Minimum Annual Take-Home Pay" provision in the contract between the parties is hereby denied.

Sec. 5. Shift Differential

The Board declines to act on this issue at the present time for the reason that such issue is presently before the National War Labor Board in Case No. 111-2283-D (8-D-103), such case involving the subject company and local union.

The Board expressly retains jurisdiction of this case pending final determination of this issue by the National War Labor Board.

Sec. 6. Vacations

All employees, upon accumulating one year or more of service with the employer, shall receive a vacation of one week with pay based upon forty (40) hours at straight-time rates or, if the regular work schedule is more than forty (40) hours a week, such vacation pay shall be determined by the number of hours in the standard workweek under which the company is operating, multiplied by the straight-time hourly rate.

All employees upon accumulating 5 years or more of service with the employer, shall receive a vacation of 2 weeks based upon eighty (80) hours at straight-time rates or, if the regular work schedule is more than forty (40) hours a week, such vacation pay shall be determined by the number of hours in the standard workweek under which the company is operating, multiplied by the straight-time hourly rate.

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

The effective date of such agreement shall be Mar. 1, 1944, such date being the expiration date of the last contract between the parties, or any other such date as the parties may mutually agree upon.

The termination date of such agreement shall be Feb. 28, 1945, such date being one year from the effective date as shown above, or any other such date as the parties may mutually agree upon.

III. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board shall take effect fourteen (14) days from the date of mailing hereof, such date of mailing being Jan. 2, 1945, unless in the meantime a petition for review is filed with the Eighth Regional War Labor Board pursuant to the accompanying appeals procedure, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

IV. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect (subject only to the provisions of Par. V), and, in the event a petition is filed with the Eighth Regional War Labor Board seeking review of portions of this order, either party may request the Eighth Regional War Labor Board to make the remaining portions of the order immediately effective.

V. As required by Executive Orders No. 9250 and 9328, as supplemented by the directive of May 12, 1943, the wage adjustments as provided in Sec. 2 of Par. I of this order shall in any event become effective only upon determination by the Office of Price Administration that the wage increases ordered in that section will not require any change in price ceilings or, if no such determination is made, then upon approval by the Director of Economic Stabilization. The parties will be promptly notified of such action. As provided in Sec. 802.40 of the "Rules

of Organization and Procedure" of the National War Labor Board, this order is subject to review by the National War Labor Board at any time on its own motion.

Signed by Wales H. Madden and Wade Hartrick, public members; W. R. Bell and G. C. Kiley, employer members, subject to dissent with opinion on Secs. 1 and 6; and R. B. James and R. E. Curtis, labor members, subject to dissent with opinion on Secs. 2, 3 and 4 of Par. I.

Opinion of Regional Board VIII

Dec. 29, 1944

MADDEN, Public Member:—This is a dispute case. The issues certified were: (1) Wages, (2) night-shift differential, (3) vacations, (4) sick leave, (5) check-off, and (6) minimum annual take-home pay.

The action of the Board on Dec. 21, 1944, resulted as follows: (1) The union's demand for wage increases was denied except to the extent that the substandard rate of $.50 per hour and an application of the "B Method" was ordered. (2) The Board declined to act on the night-shift differential pending final adjudication by the Naional Board of the issue between the same company and the same union, the issue being present in Case No. 111-2283-D now pending before the National Board.* (3) The standard vacation provision of one week's vacation with pay after one year's service and two weeks' pay after five years' service was granted. (4) The union's request for sick leave provision in the contract was denied. (5) The union's request for compulsory check-off was denied, but the Board ordered the customary voluntary check-off. (6) The union's request for a minimum annual take-home pay provision was denied.

WAGES

There would seem to be little room for controversy as to the correctness of the Board's action on all of the issues, with the exception of wages. The union representative ably and forcibly contended that the Board should order wage rates at this plant which would be comparable to rates paid elsewhere in the smelting industry. He contended that the National Board by the creation of the Non-Ferrous Metals Commission had, in effect, established a policy of stabilizing wages throughout the industry without regard to the basic wage rates being paid by other industries in the locality where the particular plant in question is located.

In support of the rates sought, the union offered evidence showing rates paid in Utah, Idaho, Michigan, Arizona, New Mexico, Nevada, California, and in other parts of Texas. He further contended that this Regional Board had recognized the policy for which he stood in Case Number 111-3852-D involving the American Smelting and Refining Company in El Paso, urging that, in deciding that case, this Board ordered wage rates comparable to rates being paid in the non-ferrous metals industry and disregarded local area rates.

The company, on the other hand, showed that the employees of this plant had already received a 56 per cent increase in wage rates since Jan. 1, 1941. They showed that Laredo was in a comparatively isolated locality, the nearest centers of population being San Antonio, 150 miles to the north; Corpus Christi, 150 miles to the east; El Paso, 700 miles to the west; and Monterrey, Mex., 150 miles to the south; and, further, that the wage rates of the subject company were above those of other employers in and around Laredo in comparable job classifications. The company also contended that the companies whose rates which were exhibited by the union were not engaged in the production of primary antimony with one exception.

When the case came up for consideration by the Board, following an oral hearing, the union members of the Board urged that, even if the theory of the local union that wage rates throughout the non-ferrous industry should be equalized be discarded, that nevertheless, this Board should use for comparative purposes the rates ordered by the Board in the El Paso smelter. It was the opinion of the public members of the Board, concurred in by the industry members, that the only permissible wage adjustments in the subject plant were those made possible by an application of the substandard minimum of $.50 per hour with an application of the "B Method." It was quite clear that the employees were not entitled to any adjustment under the Little Steel formula, having already received approximately 56 per cent increase since Jan. 1, 1941. The majority of the Board was also of the opinion that the

* ED. NOTE: The National Board, on Jan. 26, 1945, denied review of the Eighth Regional Board's directive order of Oct. 13, 1944, in this case.

principle announced in the Los Angeles Railway Corporation case (Case No. 10-5417 [9 War Lab. Rep. 772]) should apply. In that case it was said, "It is not disputed that the operating employees' rates in the instant case are less than those paid to similar employees in most cities of comparable size in other sections of the country. However, as stated heretofore, it is not the policy of the National War Labor Board to attempt to equalize rates in a given industry upon a nation-wide basis. Rather, the Board takes the position that, except in rare and unusual cases, it should not attempt to go beyond regional boundaries in ascertaining the proper rates to be paid in a given industry." Hence, the majority of the Board is of the opinion that it would be improper to use as a guide in fixing wages in this plant wage rates paid elsewhere in the industry, assuming that this antimony plant is otherwise comparable to the plants where such wage rates are paid.

A majority of the Board was also of the opinion that the wage rates paid at the El Paso smelter should not be the determining guide. It is true that this Board did authorize the payment of wage rates in the El Paso smelter which were comparable to those paid by the Phelps-Dodge Corporation in El Paso, presumably for the purpose of removing inter-plant inequities in that local area. It is an established fact that the Phelps-Dodge rates are high for the area and, as a result of this Board's action, the El Paso smelter rates are likewise high. It is unquestionably true that, in the Laredo area, wage rates have been and yet are comparatively low. Laredo is several hundred miles distant from El Paso. The majority of the Board felt that, if the El Paso rates were put into effect in the smelter at Laredo, it would result in a decidedly unstabilizing effect in the Laredo area and that dissension and unrest would result in other industries there.

The company contended that under the Postal Telegraph Company case (8 War Lab. Rep. 644) the Board would not be justified in ordering the 12 job classifications which paid a rate less than $.50 per hour to the substandard minimum and using the "B Method" of adjustment. It quoted the following language from that case, "The designation by the Board of a rate of pay of $.50 per hour as the line below which rates are considered to be substandard is not the specification of a compulsory minimum wage for a community or for an industry. On the contrary, such a designation only provided a basis in appropriate cases for approving any increased rates below that figure as proper for the correction of a substandard living * * * In actual practice, therefore, the actual rates most frequently paid in certain areas for specific types of work may be less than the figure designated as the Board's dividing line below which rates are to be considered to be substandard."

While there is force in the company's argument, a majority of the Board felt that there was no reason why the substandard rate should not be brought to the $.50 per hour minimum. It felt that the Postal Telegraph case was not applicable. There are no other plants in this industry in this area and there have been no brackets set by the Board for this industry in this area. There is, therefore, no compelling industry practice which prevents the application of a substandard rate. It is true that, in so far as the area is concerned, wages have been notably low, as is demonstrated by the fact that employees in this plant have received a 56 per cent increase since Jan. 1, 1941, and yet some of the rates are below $.50 per hour. However, the increases effected by an application of the method used by the Board are comparatively slight and will, in the opinion of a majority of the Board, not be unstabilizing either in the industry or in the area. It is not intended by this opinion to attempt to minimize the effect of the Postal Telegraph decision nor to find fault with it, but, rather, to distinguish it from the facts at hand and to hold that in the absence of compelling area or industry practice no sound reason for not applying a substandard rate is shown.

Dissenting Opinion of Employer Members of Regional Board VIII

Dec. 23, 1944

CHECK-OFF

KILEY and BELL, Employer Members:—These industry members dissent from the majority order respecting Sec. 1, the check-off, for the reasons that the record in this case demonstrates that there is a union shop agreement in effect between the

employer and the union. The Board has, in spite of this provision, ordered the check-off of monthly dues for all employees who are members of the union, which membership under the union-shop agreement is a condition precedent to the employment. It is obvious that the check-off of dues with the union-shop provision in effect, is not only unauthorized by the Board, but, if the company complies with this portion of the directive of the Board, they will be subject to charges by the National Labor Relations Board under the Wagner Act for being guilty of contributing to or aiding a particular union in the conduct of its business, which acts on the part of the company are expressly prohibited by the Wagner Act.

VACATIONS

The majority of the Board has written a vacation clause under Sec. 6 of the directive that is more liberal than the vacation clause now in effect between the parties and which the record shows is equal to, if not in excess of, any plan in the industry or the area. It is urged by these industry members that the Board should not liberalize established vacation plans between the parties to the collective bargaining agreement under the basis of a so-called standard vacation clause in the absence of a showing that the practice in the industry or the area is at least as liberal as the so-called standard vacation clause permits.

Dissenting Opinion of Labor Members of Regional Board VIII

Dec. 28, 1944

WAGES

CURTIS and JAMES, Labor Members:—The labor members dissent from the majority decision on the issue of wages in this case for the reason that we find absolutely no justifiable ground for denial of the union's demands. The union presented wage data to the panel and to the Board, based on the most comparable plants within the area and the industry, that left no doubt as to the justice and reasonableness of their demands. The decisions of the Non-Ferrous Metals Commission in similar cases which have been upheld by the National Board prove beyond a question that the employees in the instant plant were denied wage increases by this Board which were clearly allowable.

In our opinion, the Board seriously erred by giving weight to the panel's recommendation which the company seized upon to argue that a sizeable increase in the city of Laredo, Tex., would generally unstabilize wage conditions in that city.

We wish to point out that the decision of the National Board in the North American Aviation cases at Dallas, Tex., and Kansas City, Mo., as well as the Douglas Aircraft cases [10 War Lab. Rep. 61] at Tulsa and Oklahoma City, Okla., has had no unstabilizing effect on wage conditions generally within those cities and, therefore, such argument should not hold in the instant case.

It is our firm opinion that the application of the substandard and "B" squeeze method of adjustment of wages in this plant where average hourly increases of 16 cents were permissible, serves to deprive the employees not only of justified wage increases but also a decent standard of living to which they are entitled.

Report and Recommendations of the Panel *

Oct. 27, 1944

BACKGROUND

The Texas Mining and Smelting Company which is located at Laredo, Tex., is engaged in the production of antimony metal and antimony oxide. The company produces 706 tons of antimony metal per month and 134 tons of antimony oxide per month. Antimony has been designated as a strategic material by the Army and Navy Munitions Board. It is said to have more uses of a direct military character than any of the other nonferrous strategic and critical materials. This company, according to its own testimony, produces 90 per cent of the antimony that is produced in the United States. The remaining 10 per cent of this metal is produced by a company in Utah.

Local Union 412 (CIO), the Texas Mine, Mill, and Smelter Workers, was certified on January 4, 1941, by the National Labor Relations Board as the bargaining representative for the employees of this company, and the union and the company entered into their first agreement on Mar. 1, 1941.

The company's plant at Laredo, Tex., is located near the border between

* ED. NOTE: Only that portion of the panel report relating to wages is reproduced.

the United States and Mexico. The plant employs approximately 400 employees, 350 of whom are hourly paid employees, all male, who are covered by the terms of the agreement between the company and the union. It was stipulated by both the company and the union that all of the hourly paid employees were Mexican or of Mexican extraction.

It was pointed out by the company, during the hearing, that a certain percentage of these employees resided in Mexico.

ISSUES

The present dispute is a result of a request on the part of the union for the following:

1. Wages,
2. Shift differentials,
3. Increase in vacation with pay,
4. Sick leave,
5. Check-off, and
6. Minimum annual take-home pay.

1. Wages

The following are the hourly rates of pay being paid by the company, and the union's proposal:

Classification	Present Hourly Rate	Union's Proposal
Blast Furnace		
Motorman to Slag Disposal	$ .55	$ .77
Helper	.49	.73
Hoistman	.58	.80
Hoistman Helper	.49	.73
Weighman	.53	.77
Weighman Helper	.50	.75
Furnace Tapper-Helper	.50	.75
Charge Car Man	.52	.75
Man to Metal Disposal	.49	.75
Doubling Furnace		
Furnace Man in Charge	.55	.77
Two Helpers	.52	.75
Starring Furnace		
Furnace Man in Charge	.55	.77
Three Helpers	.52	.75
Bricutting Operator	.58	.80
Weighman	.52	.77
Labor	.49	.75
Slag Crushing		
Operator	.59	.80
Labor	.49	.75
Machine Shop		
First Class	.72	1.25
Helper	.49	.75
Janitor to Houses of Working Men	.47	.70
Oxide Furnace		
Operator	.54	.77
Helper	.47	.75
Oxide Packing Unit		
Operator	.54	.77
Helper	.52	.75
Assay Office		
Helper	.57	.75
Two Bench Helpers	.53	.75
Storekeeper Helper	.49	.75
Painter	.53	.75
Truck Driver	.53	.75
Blacksmith	.78	1.00
Helper	.49	.75
Bricklayer	.78	1.00
Helper (2nd Class Bricklayer)	.53	.75
Carpenter	.78	1.00
Helper	.49	.75
Patio	.47	.70

Retroactivity requested to date of expiration of 1943 contract.

The union contends that the present wages paid in this plant are not the sound and tested rates for either the area or the industry, and, in fact, are the lowest rates being paid employees of any smelter in the entire United States. The union submitted a chart showing the comparative smelter and refining rates throughout the United States. According to the chart the following rates are being paid common labor and machinists in the various areas:

Area	Common Labor	Machinists
Laredo, Tex.	$3.76	$5.76
Corpus Christi, Tex.	4.40	10.00
El Paso, Tex.	4.90	7.86
Idaho	7.50	8.75

The company maintained that the wage issue had already been decided in a previous War Labor Board case, No. 111-2283-D, and that that decision should be considered final. They also

stated that the union asked for the same adjustment in wages in that case as it now seeks in the instant case. This increase, according to the company, was denied by the Eighth Regional War Labor Board in their directive order dated Dec. 27, 1943, and the union's petition for review on the wage issue was denied by the National Board on Aug. 17, 1944. The company further contended that ceiling prices on antimony and antimony oxide were fixed by the Office of Price Administration in March 1942, and to adjust the wages being paid by the company at this time would require the company to seek an increase in the ceiling prices of the company's products. The third reason offered by the company for not granting the requested adjustments by the union was that the Little Steel formula and Executive Order 9238 [7 War Lab. Rep. VII; WCDS 26] prevented such adjustments or increases. The company's employees, according to testimony of the company, have received over 56 per cent increases in wages since Jan. 1, 1941, and it was the position of the company that their wages were not substandard.

Recommendations

A majority of the panel is of the opinion that the wages requested by the union should be disallowed, based on four facts:

1. The company is paying a higher wage for labor than other companies such as the utilities companies, ice companies, and other local industries in the immediate Laredo area.

2. The company has more than fulfilled the provisions of the Little Steel formula by granting all of its employees more than 56 per cent wage increases since Jan. 1, 1941.

3. The wages in other smelters which are located at Corpus Christi, El Paso, and other parts of the United States should not be a guiding factor in this case due to the location, type of locality, and the difference in living conditions.

4. The adjustment of wages such as is requested in this case would result in upsetting the wage stabilization program in this area.

[Ed. Note: Discussion on Issues 2 through 6, at this point in the panel report, is omitted.]

Signed by George West Diehl, representing the public; Charles F. Ashcroft, representing employers, subject to dissent on Issue 5; and Clyde Ingram, representing labor, subject to dissent with opinion on Issues 1, 3, and 6.

Dissenting Opinion of Labor Representative

After carefully considering the panel report on the six issues involved in this case, I find that I am unable to agree to the findings and recommendations of the majority report with respect to "Wages," "Increases in Vacation with Pay," and "Minimum Annual Take-Home Pay." I am therefore submitting a dissenting opinion on these three issues and a concurring opinion concerning "Sick Leave" and "Check-Off." Although the panel report makes no specific recommendations either urging or denying the "Shift Differential," I feel that I am compelled to make some comment concerning this issue.

1. WAGES

The Texas Mining and Smelting Company operates the only smelter in the vicinity of Laredo, and, as a matter of fact, this is the only industry of any size in the immediate Laredo area. The nearest smelters to this plant are located at Corpus Christi, Tex., and El Paso, Tex. It is my understanding that, even though the El Paso smelter makes a different product than does the Laredo smelter, the processes used in each plant are the same. Although various smelters make different products such as antimony, tin, zinc, etc., the entire smelting industry, according to my understanding, is considered as one industry.

The company contended, as the panel report will show, that it was paying higher wages than other industries in and around Laredo, but I do not see how it can be conceded that the rates of pay of the various concerns referred to by the company should be given any consideration in arriving at adjustments in the instant case. This position is taken because the Eighth Regional War Labor Board, when establishing brackets for a particular industry does not take into consideration the rates of pay in other industries. Then, on the other hand, the industries which were mentioned by the company are not comparable to the smelting industry which is considered a major industry. Executive Order 9328 froze wages and caught

some employers with wages below what might be considered as standard for the industry and area. In order to remedy this situation, the Economic Stabilization Director issued the policy directive of May 12, 1943 [8 War Lab. Rep. XIV; WCDS 57], which reads as follows:

"In order to provide clear-cut guides and define limits as a basis for correcting substandard of living and as a basis for permitting the Board to make, within the existing price structure and within existing levels of production costs, minimum and noninflationary adjustments which are deemed necessary to 'aid in the effective prosecution of the war or to correct gross inequities' within the meaning of Sec. 1 of the Act of Oct. 2, 1942, the Board is authorized to establish as rapidly as possible, by occupational groups and labor market areas, the wage-rate brackets embracing all those various rates found to be sound and tested going rates. All the rates within these brackets are to be regarded as stabilized rates, not subject to change save as permitted by the Little Steel formula. Except in rare and unusual cases in which the critical needs of war production require the setting of a wage at some point above the minimum of the going wage bracket, the minimum of the going rates within the brackets will be the point beyond which the adjustments mentioned above may not be made."

It must be taken into consideration that the Eighth Regional War Labor Board has not established brackets for the smelting industry, and, in the absence of such brackets, the matter of adjusting wages must therefore be based on rates being paid in the industry.

The union submitted evidence in the form of a chart showing the various rates for the classifications of labor and machinists, which are considered the lowest and highest rates in the industry. For convenience, these rates are listed as they appear on the chart.

Company	Machinist Rate	Labor Rate
A. S. & R.,		
E. Helena, Mont.	$8.10	$6.60
Anaconda,		
Great Falls, Mont.	8.50	7.25
Bunker Hill & Sullivan, Kellogg, Idaho	8.75	7.50
A. S. & R.,		
Tacoma, Wash.	$8.88	$7.04
Garfield, Utah	8.45	8.45
Leadville, Colo.	8.17	5.90
Denver, Colo.	8.78	6.06
Kennecott,		
McGill, Nev.	8.40	6.45
I. S. & R.,		
Miami, Ariz.	8.37	5.21
Phelps-Dodge,		
Morenci, Ariz.	8.15	5.16
A. S. & R.,		
Selby, Calif.	9.20	6.60
Perth Amboy, N. J.	9.32	6.68
Newark, N. J.	7.76	6.68
Baltimore, Md.	9.88	6.28
Phelps-Dodge,		
Laurel Hill, N. Y.	9.41	6.45
A. S. & R.,		
Omaha, Nebr.	8.20	6.50
El Paso, Tex.	7.86	4.90
Corpus Christi, Tex.	10.00	4.40
Texas M. & S. Co.,		
Laredo, Tex.	5.76	3.76
Lowest Rate, 15 Zinc Smelters	7.20	5.80

Comparison of the above rates reveals that the company is paying much lower wages than any other smelter in the United States. One hundred and fifty of the company's employees receive an hourly rate of less than 50 cents per hour. It appears from this information that the rates of the company are substandard and that gross inter-plant inequities exist.

The company offered evidence to show that it had granted all employees an increase of more than 56 per cent since Jan. 1, 1941, and for that reason the request for wage adjustments should be disallowed. However, I wish to point out that the request of the union is not for a general wage increase, but an adjustment of wages, and the Little Steel formula therefore does not enter into the question at all.

The company stated to the panel that all of its employees covered by the agreement with the union were of 100 per cent Mexican extraction and also made mention of the fact that a certain percentage of the employees resided in Mexico. I wish to make comment with reference to the third and fourth reasons given in the panel report for not granting the wage adjustment as requested by the union. It is asserted that the rates of other plants should not be used as a basis for the adjustment due to the "location" and "type of location." There is

in this statement a strong inference, it appears to me, that an adjustment in wages is being denied because this plant is located near the border, and the company has seen fit to employ all Mexican labor. The nationality of the employees or where they maintain their residence, in my opinion, should not be taken into consideration, for the United States Government has established a no-discrimination policy, and to give weight to such statements is very definitely discriminatory. Then, too, the fact that some of these employees do live in Mexico should not have any bearing on the case. As I see it, the United States Government has formed the National War Labor Board to handle disputes arising within the United States and any living conditions or costs of living which exist in foreign countries should have no bearing in a case which has been certified to a Regional Board of the National War Labor Board.

On the basis of these facts I therefore recommend that the Eighth Regional War Labor Board grant the adjustment requested by the union, retroactive to the expiration date of the 1943 contract between the union and the company.

However, if the fact that the Texas Mining and Smelting Company employs 100 per cent Mexican labor and that a certain percentage of them reside in Mexico should be given consideration, I would like to point out that the smelter at El Paso, Tex., is surrounded by similar conditions, in that the company employs all Mexican labor, and El Paso is also a border town. In view of these conditions, it would be my further recommendation that the least consideration that should be given this case would be to adjust the rates, using the El Paso wage scale as a basis.

[Ed. Note: Discussion on Issues 2 through 6, at this point in the dissent opinion, is omitted.]

Signed by Clyde Ingram, representing labor.

ASSOCIATED MIRROR MFRS., INC.—

Decision of National Board

In re Associated Mirror Manufacturers, Inc. [New York, N. Y.] *and* Brotherhood of Painters, Decorators and Paperhangers of America, Glass Bevelers, Mirror Workers and Cutters Union, Local 528 (AFL). Case No. 111-10870-D, June 14, 1945 (made public Aug. 23, 1945).

VACATIONS — Standard plans — Prorated vacations

Employees are entitled to Board's standard vacation plan of one week for one year of service and two weeks for five years of service. Regional Board's order also granting 1.5 weeks' vacation for 3 years of service is modified accordingly, where employers contend that award is contrary to industry practice.

For other rulings see Index-Digest 205.323 and 205.334 in this or other volumes.

Majority decision of Board amending directive order of Regional Board II (New York). Public members concurring: Lewis M. Gill and Dexter M. Keezer. Employer members concurring: Earl Cannon and Lee H. Hill. Labor members dissenting: Raymond McCall and Delmond Garst.

Directive Order No. 2

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having considered further that part of the company's petition for review which relates to the issue of vacation and having reviewed the merits of the case in this respect, hereby supplements its directive order of May 21, 1945, and orders:

I. Vacation.* The petition for review of this issue is accepted and Par.

* Ed. Note: The Regional Board ordered not only one-for-one and two-for-five but also 1½ weeks' vacation after three years' service. The employer association contended, among other things, that the award was not in line with industry practice and that 80 per cent of the industry in the area, which is not organized, does not grant paid vacations and also pays much lower rates. The National Board's award is made in the light of the fact that there were insufficient special circumstances to justify a prorated vacation award. (Information supplied by WLB staff.)

2 of the Second Regional War Labor Board's directive order of Dec. 29, 1944, is hereby modified to read as follows:

"Employees with one year of service with the company shall be entitled to one week's annual vacation with pay; employees with five years of service with the company shall be entitled to two weeks' annual vacation with pay."

II. The terms and conditions of employment set forth in the Second Regional War Labor Board's directive order of Dec. 29, 1944, as modified herein, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Directive Order No. 1

May 21, 1945

By virtue of and purusant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having considered the petition filed by the company for review of the directive order of Dec. 29, 1944, of the Regional War Labor Board for the Second Region issued in the above entitled case, hereby decides the dispute between the parties and orders:

I. That said petition for review except in so far as it relates to vacations is hereby denied, and the said directive order of Dec. 29, 1944, is hereby affirmed and adopted as an order of the National War Labor Board.

II. Vacations. Action on this issue is hereby deferred pending further consideration by the Board.

III. The request for an oral hearing is hereby denied.

IV. Subject to the provisions of Par. II above, the terms and conditions of employment set forth in said directive order of Dec. 29, 1944, shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Signed by Nathan P. Feinsinger and Dexter M. Keezer, public members; George Bahrs and Clarence O. Skinner, employer members, subject to dissent on Par. I; and James A. Brownlow and Delmond Garst, labor members.

Directive Order of Regional Board II (New York)

Dec. 29, 1944

The Regional War Labor Board for the Second Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Holidays

The issue of pay for holidays not worked is hereby remanded to the parties for further negotiation and for report to the Board within 30 days on the outcome of their negotiations. Any agreement reached which proposes to grant more such holidays with pay than has been the practice heretofore shall be submitted to the Board for approval. If the parties fail to agree, the matter may be laid before the Board for determination upon the parties' written presentation of evidence in light of the criteria of industry-area practice described in the accompanying opinion, issued in the matter of Kelly Island Lime and Transport Co., Case No. 111-8705-HO [20 War Lab. Rep. 353].

2. Vacations

Employees with one year of service with the company shall be entitled to one week's annual vacation with pay; employees with three years of service with the company shall be entitled to 1½ weeks' annual vacation with pay; employees with five years of service with the company shall be entitled to two weeks' annual vacation with pay.

3. Sick Leave

The request of the union that this Board order paid sick leave is hereby denied. This shall not be construed as a limitation upon further collective bargaining by the parties with reference to this issue.

4. Hours and Overtime

Past practice shall be continued with reference to scheduled hours of work and overtime, since it is the understanding of this Board that the company is not covered by the provisions of Executive Order 9240 [8 War Lab. Rep. XXVII; 26 War Lab. Rep. No. 3, IX; WCDS 20].

5. Closed Shop

The request of the company for modification of closed-shop provisions in the contract between the parties is hereby denied.

6. Apprenticeship Program

The request of the company that this Board order the institution of an apprenticeship program is hereby denied. This shall not be construed as a limitation upon further collective bargaining between the parties with reference to this issue with the aid and advice of any appropriate state or federal agency.

7. Wage Reopening

In the event that there is a substanital change in the national wage stabilization policy, either party may renegotiate wage rates by giving 30 days' notice in writing to the other party.

8. Retroactivity

Adjustments resulting from the provisions of this directive order shall be effective as of Aug. 31, 1944, or a subsequent date to which the parties may have otherwise agreed.

The procedure to be followed in making the retroactive adjustments to the employees who have either quit or been discharged shall be in accordance with the resolution of the National War Labor Board of Apr. 2, 1943 [26 War Lab. Rep. 3].

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall become operative 15 days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall become operative, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the Regional War Labor Board to make the remaining portions of the order immediately operative.

Signed by Walter Gellhorn and Emanuel Stein, public members; Howel H. Barnes, Jr., and Joseph W. Zeller, employer members, subject to dissent on vacations, hours and overtime, and closed shop; and James C. Quinn and Peter K. Hawley, labor members, subject to dissent on holidays and sick leave.

Report and Recommendations of the Hearing Officer *

Nov. 2, 1944

At the hearing held before the undersigned, duly designated hearing officer, on Oct. 31, 1944, at the Board's offices in New York City, both parties were represented.

PARTIES

The Associated Mirror Manufacturers, Inc., is a trade association composed of a number of small employers who aid in the manufacture of mirrors. It has had bargaining relations with this union for more than 25 years.

The attention of the Board is called to the fact that another local of this union and the employer herein involved are before the Board on another dispute case (111-8825-D). According to the information available to me, this case has been heard by a panel but the panel report has not yet been received. It is suggested that this case and Case No. 111-8825-D be considered at one time.

ISSUES

The issues in dispute are:

1. Holidays,
2. Vacations,
3. Sick leave,
4. Hours and overtime,

* Ed. Note: Only that portion of the hearing officer's report relating to vacations is reproduced.

5. Closed shop,
6. Apprenticeship, and
7. Wage reopening clause.

[ED. NOTE: Discussion on Issue 1, at this point in the hearing officer's report, is omitted.]

2. Vacations

The union demands one week of vacation for six months of service and two weeks of vacation for one year or more.

The employer opposes this demand as contrary to industry practice.

Recommendation

It is the usual practice for this War Labor Board to grant one week's vacation for one year of service and two weeks' vacation for five years regardless of industry practice. I recommend that this practice be followed here.

[ED. NOTE: Discussion on Issues 3 through 7, at this point in the hearing officer's report, is omitted.]

Signed by Herbert R. Northrup, hearing officer for the Board.

DOUGLAS AIRCRAFT CO., INC.—

Decision of National Board

In re DOUGLAS AIRCRAFT COMPANY, INCORPORATED [Tulsa, Okla.] *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, LODGE 842 (AFL). Case No. 111-12530-D, July 24, 1945 (made public Aug. 8, 1945).

SEVERANCE PAY—Military severance pay

In accordance with established policy, Board denies union's request that employees entering armed forces be granted severance pay.

For other rulings see Index-Digest 161.500 in this or other volumes.

MAINTENANCE OF MEMBERSHIP—Responsible union—Award coupled with check-off

Responsible union is entitled to standard maintenance-of-membership provision together with compulsory check-off.

For other rulings see Index-Digest 20.779 and 110.165 in this or other volumes.

ARBITRATION—Selection of arbitrator—War Labor Board—Conciliation Service

Arbitrator provided for in grievance procedure of contract should be named by War Labor Board, despite contention of union that appointment should be made by U. S. Conciliation Service because Conciliation Service is permanent agency and Board should not assume duties which may run beyond its existence.

For other rulings see Index-Digest 10.418 and 60.726 in this or other volumes.

GRIEVANCES — Elimination of first step—Grievances affecting more than one employee

Union's request that first step of grievance procedure be eliminated for any grievance affecting more than one employee in similar situation is denied. Since (1) such provision is not common in collective bargaining agreements and (2) award may lead to complication and confusion.

For other rulings see Index-Digest 60.775 in this or other volumes.

CONTRACTS—Duration of contract—Assignment of contract

Vacation, sick leave, and wage provisions directed by Board or already in effect should be included in contract and continue in effect for duration of agreement despite contention of company that Board should not order such provisions to remain in effect beyond 60 days after termination of Board's existence.

Union's request that contract covering employees of government owned, privately operated plant should be made binding upon successors or assigns of company is denied.

For other rulings see Index-Digest 37.351 and 37.150 in this or other volumes.

HOURS OF WORK—Work schedule—Right to change—Call-in pay

Company's request that it be given right to change agreed upon shift hours at direction of governmental agencies is denied. Union contends that (1) requested clause would permit company to change shifts unilaterally under "guise of direction of some procurement agency," thereby nullifying bargaining rights guaranteed by National Labor Relations Act, and (2) if valid reason for change arises and workers are consulted prior to institution of change, there will be no need for requested provision.

Employees of airframe company are entitled to four hours' reporting pay

since such provision is common in aircraft industry. Request for eight hours' reporting pay is denied as being far in excess of amount generally paid in airframe industry.

For other rulings see Index-Digest 65.180 and 162.300 in this or other volumes.

DEMOTIONS AND DOWNGRADING—Curtailed operations—Request of employee—Inability to perform job

Employee may be assigned to lower-rated job classification only when (1) he is unable to meet requirements of present job, (2) sufficient work is not available, or (3) reassignment is requested by employee.

For other rulings see Index-Digest 42.001 in this or other volumes.

PREMIUM WAGE RATES—Provisions more liberal than Executive Order 9240—Hazardous work premium

Union's request that Board direct overtime and holiday provisions not permissible under Executive Order 9240, such provisions to become effective at termination of war, is denied in accordance with Board's policy of not ordering conditions that cannot presently be made effective.

Union's request for premium rate for extra hazardous work is denied where (1) company contended that hazard was considered in evaluating jobs and (2) parties' contract permits employees to refuse to do work which employee thinks involves health hazard until joint committee determines that job has been made safe.

For other rulings see Index-Digest 82.890, 140.417, 140.282, and 140.677 in this or other volumes.

WAGES—GOING WAGE RATES—Industry stabilization—Aircraft industry

Union and Tulsa, Ariz., airframe plant should negotiate upon applicable provisions of Board orders establishing basic wage rates and job classifications in southern California airframe industry. Union's request that all such orders be extended to instant plant is denied.

For other rulings see Index-Digest 250.220 in this or other volumes.

WAGE ADJUSTMENTS — Merit increase—Establishment of appropriate standards

Union is entitled to negotiate with company appropriate standards to be followed by company in making merit increases within rate ranges. Employees should be informed of results of merit review and may complain of company's action through contractual grievance machinery. If grievance is filed, employee involved and union shall receive full statement of reasons for company's decision.

For other rulings see Index-Digest 225.640 and 60.818 in this or other volumes.

WORKING CONDITIONS — Assignment of patents

Union's request that company be prevented from requiring assignment of inventions developed by employees during their course of employment is denied where company contends that (1) employees are compensated for inventions accepted and (2) company provides full facilities and background for inventions and pays employee's wages during developmental work.

For other rulings see Index-Digest 330.001 in this or other volumes.

Majority decision of Board amending recommendations of National Airframe Panel. Public members concurring: Lewis M. Gill and Jesse Freidin. Employer members dissenting on Pars. 1, 7, 8(b), 11, and 12: Earl Cannon and Charles Roberts. Labor members dissenting on Pars. 2, 3, 5, 6, 8(a), 10, 13, and 14: James A. Brownlow and Carl J. Shipley.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby decides the dispute between the parties and orders that the following terms and conditions shall govern the relations between the parties:

1. Union Security

"(a) All employees who, on Aug. 13, 1945, are members of the Union in good standing in accordance with its constitution and by-laws and all employees who become members after that date shall, as a condition of employment, maintain their membership in the Union in good standing for the duration of the collective agreement in which this provision is incorporated or until further order of the Board.

"The Union shall, immediately after the aforesaid date, furnish the National War Labor Board and the Company with a notarized list of its members in good standing as of that date.

"The Company, for said employees, shall deduct from the first pay of each month the union dues for the preceding month and promptly remit the same to the duly designated officer of the Union. The initiation fee of the Union shall be deducted by the Company and remitted to the duly designated officer of the Union in the same manner as dues collection.

"The Union, its officers, and members shall not intimidate or coerce employees into joining the Union or continuing their membership therein.

"(b) If a dispute arises as to whether an employee (1) was a member of the Union on the date specified above or (2) was intimidated or coerced during the 15-day escape period into joining the Union or continuing his membership therein, such dispute may be submitted for determination by an arbitrator to be appointed by the National War Labor Board. The decision of the arbitrator shall be final and binding upon the parties.

"(c) If a dispute arises as to whether an employee (1) has failed to maintain his membership in the Union in good standing after the aforesaid date or (2) was intimidated or coerced into joining the Union after the aforesaid date, such dispute may be submitted for determination by an arbitrator to be selected in the manner provided by the contract of the parties or, if no such provision exists, to be selected by special agreement. In the absence of such a contract provision or special agreement, the arbitrator will be selected by the National War Labor Board, on due application. The decision of the arbitrator shall be final and binding upon the parties."

Any party desiring to post or otherwise publish an official explanation by the National War Labor Board of the foregoing maintenance-of-membership provision may use the [standard] form of notice [and] procedure to be followed in administering the maintenance-of-membership provision, in the absence of some other procedure agreed to by the parties [12 War Lab. Rep. XXVIII; WCDS 321].

2. Selection of Arbitrator

The arbitrator provided for in the third step of the grievance procedure shall be appointed by the National War Labor Board.

3. Settling Grievances

The union's requested provision is denied.

4. Transfers

The parties shall adopt the following provision:

"An employee may be permanently assigned to a job classification which carries a lower rate of pay only if he is unable to meet the requirements of his present job or in case sufficient work is not available in his present classification or in the event that he requests reassignment to an available vacancy, provided that such assignment is not inconsistent with the contractual rights of another employee."

5. Severance Pay

The union's request is denied.

6. Standard Workday and Workweek and Holidays

The union's requests are denied.

7. Shift Hours

The company's request is denied.

8. Minimum Reporting Time

(a) The union's request for eight (8) hours' call-in pay is denied.

(b) The parties shall adopt the following provision:

"Any employee ordered to report for work and so reporting shall receive a minimum of four (4) hours' pay including a shift differential, if any. This will not apply in cases of emergency shut down, arising out of a condition beyond the Company's control. When an employee has not been given notice not to report before leaving the premises at the end of his regular shift, he shall be considered as ordered to report."

9. Basic Wage Rates

(a) The parties are directed to negotiate upon the applicable portions of the Mar. 3, 1943, and subsequent orders of the Board [6 War Lab. Rep. 581, 22 War Lab. Rep. 523, 26 War Lab. Rep. 379] or the West Coast Aircraft Committee.

(b) The existing wage rate structure and portions of the Mar. 3, 1943, and subsequent orders of the Board or the West Coast Aircraft Committee which are found to be applicable shall remain in effect for the life of the agreement.

10. Extra Hazardous Work

The union's requested provision is denied.

11. Review Periods

The union shall have the right to negotiate with the company appropriate standards to be followed in

making merit increases within rate ranges. Once the merit plan has been established, the company shall be permitted to apply the standards of the merit plan. Any complaints as to the company's action may be filed through the contract grievance procedure. Following a review, each employee and the union shall be notified in writing whether or not he has received a merit increase. In the event a grievance is filed, the employee and the union shall be entitled to a full statement of the reasons for the action. Such statement need not be in writing but should specify which standards of performance the employee has failed to meet.

12. Vacation and Sick Leave

The vacation and sick leave plan shall remain in effect for the duration of the agreement.

13. Patents and Plant Suggestions

The union's request is denied.

14. Assignability

The union's request is denied.

The foregoing terms and conditions shall be incorporated into a signed agreement reciting the intentions of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Report and Recommendations of the National Airframe Panel

June 14, 1945

BACKGROUND

The Tulsa, Okla., plant of the Douglas Aircraft Co., Inc., is engaged in the manufacture and assembly of aircraft for the United States Government. The total number of employ- is approximately 15,043. Approximately 12,185 employees are in the bargaining unit represented by the union in this case.

The International Association of Machinists, Lodge 842, was certified by the National Labor Relations Board as the collective bargaining agent for the hourly paid production and maintenance employees on June 28, 1944. Contract negotiations commenced immediately following the certification, and on Sept. 6, 1944, the parties reached a "proposed agreement." Those issues which were not agreed upon were certified to the National War Labor Board by the Secretary of Labor on Nov. 29, 1944. A hearing was held before the National Airframe Panel on Feb. 7 and 8, 1945.

ISSUES

Several of the issues which were in dispute have since been disposed of by agreement between the parties.

The panel's report and recommendations cover the following issues:

1. Union security,
2. Selection of arbitrator,
3. Settling grievances,
4. Transfers,
5. Severance pay,
6. Standard workday and workweek and holidays,
7. Shift hours,
8. Minimum reporting time,
9. Basic wage rates,
10. Extra hazardous work,
11. New jobs,
12. Review period,
13. Vacations and sick leave,
14. Patents and plant suggestions, and
15. Assignability.

1. Union Security

The union originally requested a provision which would require all employees covered by the agreement to become and remain members of the union in order to retain their employment. The union further requested a provision which would give union members preference of employment. These requests were later modified and the union now seeks the Board's standard maintenance-of-membership and check-off provisions.

The company is opposed to any form of union security and has argued that the burden of proof should be upon the union to show that it is a responsible labor organization before being awarded any union-security provision. The company contended that the panel, by placing upon the company the burden of proving that the union is an irresponsible organization, has changed the policy of the National War Labor Board as expressed in the Board's opinion in the case of the Humble Oil Company (Case No. 111-1819-D decided Apr. 1, 1944 [15 War Lab. Rep. 380]). The company opposes maintenance of membership as a matter of principle and believes particularly that at this time with a critical manpower shortage there should be no restrictions placed upon the hiring or retaining of employees.

The company states that, on the basis of past experience with the maintenance-of-membership and check-off provisions at its plant in El Segundo, Calif., it has found that

there are several points which should be clarified if maintenance of membership and check-off are awarded in this case. For example, the company stated that the Board's order in the El Segundo case [6 War Lab. Rep. 581] was not clear with respect to the list of employees whose dues should be checked off. The company stated that no provision was made for employees who had paid their dues in advance. The company suggested that, on the basis of past experience, provision should be made for deductions of current dues only and should be based upon authorization cards voluntarily signed by the employees.

Recommendation

The panel majority, with the industry members dissenting, recommends that the Board award in this case the standard maintenance-of-membership provision. No evidence was introduced, and no showing was made that the union is not a responsible organization. The panel majority finds that the union, in accordance with the policy followed by the Board, is entitled to maintenance of membership.

The panel majority also recommends that the Board direct the company to deduct the union dues and initiation fees of those employees who are members of the union 15 days after the date of the Board's order, as well as for those employees who thereafter join the union. The Board's order, in the case of the El Segundo plant of the company, did not require the union to submit a list of its members to the company as well as to the National War Labor Board. The panel majority recommends that the union be required to furnish such a list to the company in order for the company to know the names of those employees whose dues are to be deducted. This provision will eliminate the difficulty which the company has encountered at its El Segundo plant by reason of not knowing the names of those employees whose dues should be deducted.

The panel has considered the suggestions made by the company with respect to proposed changes in the maintenance-of-membership and check-off provisions but recommends no change in the provisions as generally ordered by the Board. These provisions were carefully worked out by the Board as being the most practical and least likely to lead to confusion or complications.

The panel majority, industry members dissenting, recommends the following provisions:

"(a) All employees who, on (15 days after date of directive order), are members of the Union in good standing in accordance with its constitution and by-laws and all employees who become members after that date, shall, as a condition of employment, maintain their membership in the Union in good standing for the duration of the collective agreement in which this provision is incorporated or until further order of the Board.

"The Union shall, immediately after the aforesaid date, furnish the National War Labor Board and the Company with a notarized list of its members in good standing as of that date.

"The Company, for said employees, shall deduct from the first pay of each month the union dues for the preceding month and promptly remit the same to the duly designated officer of the Union. The initiation fee of the Union shall be deducted by the Company and remitted to the duly designated officer of the Union in the same manner as dues collection.

"The Union, its officers, and members shall not intimidate or coerce employees into joining the Union or continuing their membership therein.

"(b) If a dispute arises as to whether an employee (1) was a member of the Union on the date specified above or (2) was intimidated or coerced during the 15-day escape period into joining the Union or continuing his membership therein, such dispute may be submitted for determination by an arbitrator to be appointed by the National War Labor Board. The decision of the arbitrator shall be final and binding upon the parties.

"(c) If a dispute arises as to whether an employee (1) has failed to maintain his membership in the Union in good standing after the aforesaid date or (2) was intimidated or coerced into joining the Union after the aforesaid date, such dispute may be submitted for determination by an arbitrator to be selected in the manner provided by the contract of the parties or, if no such provision exists, to be selected by special agreement. In the absence of such a contract provision or special agreement, the arbitrator will be selected by the National War Labor Board, on due application. The decision of the arbitrator shall be final and binding upon the parties."

Any party desiring to post or otherwise publish an official explanation by the National War Labor Board of the foregoing maintenance-of-membership provision may use the [standard] form of notice [and] procedure to be followed in administering the maintenance-of-membership provision, in the absence of some other procedure agreed to by the parties.

2. Selection of Arbitrator

The union has requested that the arbitrator provided for in the third step of the grievance procedure be designated by the Conciliation Service of the Department of Labor rather than by the National War Labor Board. It is the position of the union that the Conciliation Service is prepared to call upon many qualified men to serve as arbitrators and is a permanent agency which will continue after termination of the war. The National War Labor Board should not, according to the union, assume duties which may run beyond the Board's existence.

The company has argued that the War Labor Board is the appropriate agency to designate the arbitrator because it is more familiar with the questions raised and is in a better position to appoint the man best qualified for the particular case.

Recommendation

The panel majority, with labor members dissenting, recommends that the arbitrator be appointed by the National War Labor Board rather than by the Conciliation Service. This recommendation conforms to the policy which the National War Labor Board has followed of not delegating this responsibility to other agencies.

3. Settling Grievances

The union has requested that the following be added to the grievance procedure provisions of the collective bargaining agreement:

"(f) Any grievance under any provision of this agreement affecting more than one employee, all of whom are similarly situated, may be initiated in Step 1 or Step 2 of the grievance procedure, and the decision of settlement arrived at shall apply to and settle the grievance of all such similarly situated employees."

The union points out that this provision was proposed by the company at its El Segundo plant and was accepted by the union. The union believes that, where grievances arise which in all important aspects are identical to grievances which have been previously processed, the settlements arrived at in the earlier cases should be applicable to the later cases. The union contends that the provision will eliminate lengthy procedures which are merely duplications of earlier proceedings. The union states that it is reasonable to assume that where a grievance arises which is similar to one already processed or to one which is then pending, the case should be disposed of either by the precedent decision or the decision in the pending similar case. If there is an honest difference of opinion between the parties as to whether one case is similar to another case, then that particular question should, according to the union, go to arbitration.

The company is opposed to the proposed provision and contends that the grievance procedure which has already been negotiated is adequate for the prompt and final settlement of any grievance involving the interpretation or application of any of the provisions of the contract.

It is the company's belief that the proposed provision will multiply the grievances arising under the contract instead of consolidating them. Questions will be raised as to whether the employees are similarly situated and are thereby covered by the provision. The company also expresses the fear that, under the proposed provision, the union might take the position that it could seek an overall wage increase since all employees similarly situated would be affected.

The company indicated its willingness to discuss matters that involve a number of employees, but it does not believe that general problems should be processed through the grievance procedure. The company stated that the aircraft industry is complex with hundreds of different job classifications, many of which require equal skill or ability but are nevertheless entirely different. Any attempt, according to the company, to process the problems arising from these complex job classifications through a single grievance would "open up an extremely fertile field for disputes. It will have the affect of multiplying grievances rather than reducing their number."

The company stated that its experience with the provision in question at the El Segundo plant has been unsatisfactory, and it does not wish to repeat the mistake at Tulsa.

Recommendation

The panel majority, with the labor members dissenting, recommends that the request of the union for the proposed provision be denied. Whenever there is a grievance which appears to be similar to a grievance which has already been settled or to one which is then pending, the parties should make every effort to agree to settle the grievance in accordance with the precedent decision or in accordance with the settlement finally arrived at in the pending case. The panel majority does not, however, believe that the requested provision should be included in the contract. The majority concludes that the proposed provision may lead to complications and confusion. There is no provision, for example, for the settlement of any dispute as to whether the grievance affects more than one employee or any dispute as to whether the employees are "similarly situated." It is, of course, conceivable that such disputes may arise.

It has not been shown that the provision has been included in any collective bargaining contracts other than at the El Segundo plant of the company. In the absence of any showing that the provision is at all common in collective bargaining contracts or that it has worked smoothly and without complications in other cases, the panel majority declines to recommend this novel provision which may well lead to the accumulation rather than elimination of grievances.

In making its recommendation, the panel majority is not unmindful of the fact that the settlement of one grievance should be of great assistance to the parties in reaching a settlement of a later similar grievance. And of course if it were necessary for the later grievance to go to arbitration, either party would be free to cite an earlier settlement and urge that such settlement be controlling.

4. Transfers

The union requested that the following provision be included in the collective bargaining agreement:

"An employee transferred without his consent and not for lack of work or for lack of seniority shall have a right to appeal in accordance with the grievance procedure; in the event the transfer is found not justified in such proceedings, the employee shall receive reimbursement for any reduction in rate of pay he may have received during the transfer and shall be given full opportunity of employment at other occupations in a parallel labor grade, providing work is not available in the position held prior to such transfer."

The union argued that the purpose of this provision is to discourage the arbitrary transfer of employees from job classifications of a higher labor grade to those of a lower evaluation. The union stated that the word "transfer" as used in this provision does not refer to reclassification of employees but to the physical transfer of an employee from one shift to another, from one department to another, or from one type of work to another type of work.

The union gave as an example of the type of situation which it considered would be covered by the proposed provision, the case of a transfer by the company of the oldest employee from the standpoint of seniority in an A classification from one department to a B classification in another department.

The company has argued that the only type of an employee change of status which is not already covered by the seniority provisions which have been agreed upon are those changes which do not involve a change in hours or rate of pay and that the only objection an employee might have to such a change would be due to purely personal considerations. It is the company's position that, at this time under existing circumstances, production would be impeded if "purely personal reasons" were to be given consideration.

Moreover, the company contended that the proposed provision is too broad and involved and contains many elements which would cause grievances and disputes.

Recommendation

The panel believes that the parties have in this case, as has been true in other cases, inaccurately defined the issue. From the examples cited by the union and the arguments presented, it is apparent to the panel that the issue is primarily one of downgrading or demoting employees. The proposed provision, for example, states that, if a "transfer is found not justified * * * the employee shall receive reimbursement for any reduction in rate of pay he may have received during the transfer * * *." The provision could only be applicable in the case where the employee

was down-graded. There is no issue involving a change of status where the employee is assigned to a job classification which calls for a higher rate of pay.

The panel does not agree with the company's contention that the situation is covered by the agreement upon seniority provisions. The company has argued that Sec. 5 (b) (2) and Sec. 5 (b) (4) of the seniority provisions afford ample protection to employees who have been improperly reclassified. Sec. (5) is entitled "Layoff And Recall Provisions," and the panel does not find that the cited sections are necessarily applicable to the type of situation referred to by the union. The sections provide:

"Sec. (b) Layoff

"When it becomes necessary for the Company to reduce its working force by reason of work needs, employees shall be laid off in the inverse order of their seniority in accordance with the following rules:

"(1) The Company will not in any case be required to lay off employees unless the employees who would otherwise be retained possess the required qualifications to perform and are willing to perform the work of the employees to be laid off.

"(2) Subject to the provisions of Subparagraph (1) above, an employee affected by such reduction in work forces shall be entitled to displace, upon the basis of seniority, the employee with the least seniority in the same subdivision of the same job classification or in the next lower subdivision of the same job classification. In the event the employee subject to layoff is unable to perform the work of the employees with the least seniority, full consideration will be given the employees, subject to reduction for placement within the same subdivision of a job classification in work which he can perform.

* * * * *

"(4) The Company agreed that employees subjeet to layoff will be offered available jobs according to seniority, provided they possess the required qualifications to perform and are willing to perform such available jobs."

These sections are clearly applicable in the case of a general reduction in the working force. They are not applicable to a situation where there is no general layoff but where it is necessary to move employees from one classification to another. The panel believes that there should be a provision in the agreement for the handling of this latter type of situation and unanimously recommends adoption of the following:

"An employee may be permanently assigned to a job classification which carries a lower rate of pay only if he is unable to meet the requirements of his present job or in case sufficient work is not available in his present classification or in the event that he requests reassignment to an available vacancy, provided that such assignment is not inconsistent with the contractual rights of another employee."

The panel believes that the proposed provision is an eminently fair solution to the problems raised under this issue.

5. Severance Pay

The union has requested that all employees entering the armed forces receive 80 hours' straight-time pay in addition to any accumulated vacation or sick leave which may be due the employee at the time of his termination of employment.

The union has argued that, in many cases a great hardship falls upon employees inducted into the armed forces. They may leave behind accumulated indebtedness and obligations which they are unable to meet with the pay received in the service. The union further contends that, "severance pay for employees leaving the Company to enter the armed forces would preserve and maintain a higher morale than would otherwise be the case."

The company has argued that severance pay or military bonus is a problem of national scope, and the inauguration of such a policy should be by Congress rather than by the National War Labor Board.

Recommendation

The panel majority, with the labor members dissenting, recommends that the union's request be denied. A similar request was made in the case of the El Segundo plant of the company and was denied by the National War Labor Board. No factors have been shown that would justify the panel in departing from the policy which the Board has generally followed of refusing to award severance pay for employees entering the armed forces.

6. Standard Workday and Workweek and Holidays

The union has requested the War Labor Board to direct the company to include in the collective bargaining agreement provisions with respect to overtime and holidays which cannot at the present time be placed into effect because of Executive Order No. 9240 [8 War Lab. Rep. XXVII, 26 War Lab. Rep. No. 3, IX; WCDS 20]. The specific provisions proposed by the union are as follows:

Standard Workday and Workweek

"Forty (40) hours shall constitute a workweek, eight (8) hours per day, five (5) days per week, Monday through Friday, inclusive."

"Overtime

"Time worked in excess of a regular shift in any one day during the regular workweek shall be paid for at one and one-half times the regular rates for the first two hours; therafter double the regular rate shall be paid.

"Work performed on Saturday shall be paid for at one and one-half times the regular rate for a standard shift; thereafter double the regular rate shall be paid.

"Work performed on Sundays and Holidays shall be paid for at double the regular rate.

"Until the President of the United States shall proclaim that the National emergency no longer exists, the overtime provisions set up by the President's Directive No. 9240 and interpreted by the Department of Labor shall apply."

"Holidays

"Work performed on any one of the eight (8) legal holidays, New Year's Day, Washington's Birthday, Memorial Day, Fourth of July, Labor Day, Armistice Day, Thanksgiving Day, and Christmas Day, shall be paid for at the rate of doubletime.

"Should any of the above holidays fall on Sunday, the Monday immediately following shall be considered the holiday and paid for as such.

"When not worked, the above holidays shall be paid for at straight time.

"Until the President of the United States shall proclaim that the national emergency no longer exists, compensation for holidays worked set up by Directive Order No. 9240 and interpreted by the Department of Labor, shall apply."

The company opposed the proposed provisions and contended that the Board should not require the inclusion in the contract of provisions which cannot be made effective at the present time. The case of the El Segundo plant of the company was cited in which a similar union request was denied by the Board.

The union admitted at the hearing that its proposals could not actually be placed in effect at the present time but argued that they should be included in the agreement in order that the employees may receive the benefits of the provision immediately upon the termination of the present emergency. The union argued that the proposed provisions are generally found in agreements between the International Association of Machinists and the major airframe companies, are "customarily included in collective bargaining agreements," and may therefore be ordered by the Board although they cannot be made operative at the present time.

Recommendation

A majority of the panel, labor members dissenting, recommends that the union's request be denied. This recommendation conforms with the policy which the National Board has adhered to of not directing parties to include in their agreements provisions which cannot presently be made effective. The union admits that this is the Board's policy and specifically asks that the Board change its policy. The panel majority finds no facts presented in the present case which would justify a recommendation for a change in Board policy.

The union requested that, in case the panel refuses to recommend the full proposed provisons, the panel at least recommends the following:

"Until the President of the United States shall proclaim that the national emergency no longer exists, the overtime provisions set up by the President's Executive Order No. 9240, and interpreted by the Department of Labor, shall apply."

The panel assumes the parties are complying with the mandatory provisions of Executive Order No. 9240. No evidence was presented that this was not true.

With respect to the permissive features of Executive Order No. 9240, the panel majority does not agree with the labor members that a recommendation should be made to the Board that the parties be directed to include in their collective bargaining agreements as many of the provisions pro-

posed by the union as are permissible under Executive Order No. 9240. Interpretative Bulletin No. 1 of the Executive Order states with respect to the inclusion of full days of absence for the purpose of determining whether a sixth day has been worked that the answer is to be found in the prevailing custom, practice, or agreement in the plant. Thus, it may be permissible for the parties to agree or for the Board to order, that certain days upon which no work has been performed may be counted as days worked for the purpose of determining whether overtime should be paid on the sixth day of the week. It is the position of the panel majority that the fact that it is permissible under Executive Order 9240, under certain circumstances, to include certain days of absence as days worked is not sufficient reason for the Board's ordering the parties to include in their contract as many of the provisions as are permissible under the order. The panel is aware of no case where the Board has ordered the permissible overtime provisions of Executive Order No. 9240 simply because they are permissible. Moreover, no showing was made as to what the prevailing custom or practice is and, hence, the panel is not prepared to say what would be permissible and what would not be. Under the circumstances, the panel majority is convinced that there is no justification for complying with the request of the labor members that the panel recommend that the Board direct the permissive provisions of Executive Order No. 9240.

7. Shift Bonus

The company has requested that the agreement reached by the parties with respect to "shift hours" include the following proviso:

"Provided this shall not preclude the Company from making changes in the shift hours when so directed by the United States Army Air Forces or other governmental agencies."

It is the company's position that the right of the Army Air Forces or other governmental agencies to demand increased production by the changing of shifts or the increasing of shift hours should not be restricted by any contractual obligation or by directive of the War Labor Board. The company argued that, if the proposed provision were not included in the contract, the Army Air Forces might be precluded from making necessary changes in shifts or place the company in the position of being ordered to make certain changes in violation of its contract with the union.

The union argued that the proposed provision will render the agreement reached on shift hours meaningless "as under the guise of direction of some procurement agency, the entire shift structure could be changed by unilateral action." The union believes that, if any valid reason should arise as to why a shift hour should be changed and if the workers are consulted prior to the institution of the change, there will be no need for the requested provision. The union states that the provision deprives the employees of one of the fundamental rights guaranteed to them under the National Labor Relations Act.

Recommendation

The panel majority, with the labor members dissenting, recommends that the provision requested by the company be directed by the National War Labor Board. It is recommended, however, that the word "in writing" be included in the proviso so that it will read as follows:

"Provided this shall not preclude the Company from making changes in the shift hours when so directed in pany in the position of being ordered writing by the United States Army Air Forces or other governmental agencies."

The parties have agreed to the shift hours for the three shifts and have further agreed that "changes in the regular shift hours above specified may be made by mutual agreement between the Company and the Union." The panel majority believes that the request of the company that the agreement be amended to provide that the company may make changes in shift hours without agreement with the union if directed by the Army Air Forces or other governmental agencies is an entirely reasonable one. The agreement between the parties that, under ordinary circumstances, no changes will be made in the shift hours without mutual agreement protects the employees against any unjustified changes in shift hours. If extraordinary circumstances should arise and the company is ordered to institute a change by the Army or some governmental agency, the panel majority does not believe that the company should be precluded from making such a change by reason of its agreement with the union.

In order that there may be no question or doubt as to whether the com-

pany has been directed to institute a change in shift hours, it is recommended that the language proposed by the company be amended by adding the words "in writing."

8. Minimum Reporting Time

The union has requested that the reporting time for any employee ordered to report for work be a minimum of eight hours' pay, including shift differentials, if any. The provision proposed by the union is not to apply in case of an emergency shutdown arising out of conditions beyond the company's control. The union submitted, as an exhibit, a list of companies in the airframe industry and the number of hours guaranteed by those companies to employees who are ordered to report for work. This list shows that there is only one company which guarantees eight hours' pay. In all the other cases the hours guaranteed are two, three, and four.

The company has proposed that two hours' pay be paid to those employees who report for work and no work is available and four hours' pay be paid to those employees who begin work and then work ceases. The company contends that its proposal amply covers the situation.

Recommendation

The panel majority, with the labor members dissenting, recommends that the union's request for eight hours' call-in pay be denied. Clearly, this demand is far in excess of the amount generally paid in the aircraft industry, as shown by the exhibit which the union itself submitted. No evidence was introduced to show that such a practice prevails either in the industry or in the area.

The panel majority, with one industry member dissenting, recommends that the following provision be included in the agreement.

"Any employee ordered to report for work and so reporting shall receive a minimum of four (4) hours' pay including a shift differential, if any. This will not apply in cases of emergency shut down, arising out of a condition beyond the Company's control. When an employee, has not been given notice not to report before leaving the premises at the end of his regular shift, he shall be considered as ordered to report."

Provisions for four hours' pay to employees reporting to work when no work is available are commonly found in the aircraft industry. A similar provision was ordered by the National War Labor Board in the case of the El Segundo plant of the company.

9. Basic Wage Rates

The union has asked that all wage rates and job classifications included in the directive order of the Board of Mar. 3, 1943, in the case of the West Coast Airframe Companies, and all subsequent orders either of the Board or the West Coast Aircraft Committee pertaining to the Mar. 3, 1943, directive order be made applicable in this case. The union has further requested that all such orders remain in effect for the duration of the collective bargaining agreement.

With reference to its request that all West Coast Aircraft Committee orders be made applicable in this case, the union argued that it has found that some rules or regulations are necessary in view of the fact that the Board has not extended the applicability of West Coast Aircraft Committee orders to plants outside the southern California area. The union asks that the Board direct the parties to negotiate and agree upon some rules and regulations which would make possible the application of the Mar. 3, 1943, and subsequent orders. The union cites the case of the Consolidated Vultee Aircraft Corporation at Nashville, Tenn. (Case No. 111-4846-D, decided by the Fourth Regional War Labor Board on Apr. 26, 1944) in which the parties were directed to negotiate for a 30-day period rules and regulations for the application of the SCAI plan.

The company believes that the union is attempting to give jurisdiction to the West Coast Aircraft Commmittee over the Tulsa plant although the West Coast Aircraft Committee orders would not originate in Tulsa and might have little bearing upon operations at Tulsa. The company argued that the Board has never ordered the application of the Mar. 3, 1943, order or orders of the West Coast Aircraft Committee into effect in any other part of the country. It is the position of the company that such fundamentals of the Mar. 3 order as were considered applicable to Tulsa operations were included in the Board's order of approval of Oct. 12, 1943.

With respect to the issue of the duration of the wage provisions of the Board's orders, the company has requested that they remain in effect for a 60-day period following the termi-

nation of the War Labor Board's orders. It was the company's position that the parties should not be bound beyond the life of the War Labor Board and that the Board's powers are limited to the war emergency only.

Recommendation

Two questions are presented under the issues of basic wage rates: (1) Applicability of the Mar. 3, 1943, directive order and subsequent orders of the Board and the West Coast Aircraft Committee to this plant of the company and (2) the duration of such wage provisions.

The panel believes that the Board should not direct that the March 3 order and subsequent orders of the West Coast Aircraft Committee be made applicable in this case. It is obvious that very likely there are many portions of those orders which would not be suited [to] the situation which prevails at Tulsa. Moreover, it has not been the policy of the War Labor Board to extend the jurisdiction of the West Coast Aircraft Committee.

The panel is of the unanimous opinion, however, that the parties should through negotiations agree upon those portions of the Mar. 3, 1943, and subsequent orders of the Board or the West Coast Aircraft Committee which are applicable to the Tulsa plant. The company has indicated its willingness to enter into such negotiations and stated that an order to this effect was not necessary.

With respect to the issue of the duration of the wage provisions, the majority to the panel, industry members dissenting, recommends that the union's request be granted and that the existing wage rate structure and those portions of the order of Mar. 3, 1943, and the orders of the West Coast Aircraft Committee which are found applicable remain in effect for the life of the agreement. The issue of the duration of the wage provisions has been raised in several previous cases involving plants of the Douglas Aircraft Company, Inc. The panel's recommendation conforms with the decision reached by the Board in the previous cases.

10. Extra Hazardous Work

The union has requested that the following provision be included in the agreement:

"It is mutually agreed that rates of compensation for extra hazardous work will be set by agreement between the Union and the Company.

"Whenever safety devices or other conditions affecting the good health of the employees need correction, as agreed by the safety committee, and are not corrected within thirty (30) days, this shall be proof that all work done by the employees so affected is extra hazardous work; in any given case, shall be determined by the percentage of accidents and/or sickness over the normal percentage of the entire plant."

The union states that it seeks by this provision to cover extra hazards which are not considered in the evaluations of the various job classifications. The union believes that the elimination of abnormal accident or health factors can best be handled through collective bargaining.

The company contended that the element of extra hazard had been taken into account in the original evaluation of all the jobs in the aircraft industry. It was the company's position that the agreed upon portions of the agreement permitting an employee to refuse to work at any time that he feels that his duties endanger his health afford to the employees full protection. Further, the company argued that the proposed provision would be in conflict with that section of the agreement which states that the safety committee will act in an advisory capacity only.

Recommendation

A majority of the panel, labor members dissenting, recommends that the union's request be denied. Art. XII of the agreement, entitled "Safety," is designed to eliminate industrial accidents and illnesses. Art. XII provides for a plant safety committee composed of union and company representatives. The company is required to provide adequate safety devices. No employee can be discharged or disciplined for refusing to work on a job, if his refusal is based upon the claim that the job is not safe or might endanger his health, until it has been determined by a joint company-union committee that the job is or has been made safe. In view of the fact that the parties have, through agreement, established the machinery for the handling of any situation involving dangerous or hazardous work, it is the opinion of the majority of the panel that no showing has been made by the union of a need for the proposed provision.

11. New Jobs

The union indicated its willingness to withdraw its request for a provision

for establishing of new jobs provided the Board ordered the negotiation of rules and regulations governing the application of the order of Mar. 3, 1943, as amended. Since the panel has recommended that the parties be directed to negotiate on the applicability of the March 3 order of the West Coast Aircraft Committee orders, no recommendation need be made on this issue.

12. Review Period

The union has requested, in lieu of its original request for joint wage review, that the Board in the interest of uniformity direct the parties to negotiate objective standards to be followed in making merit increases in accordance with the formula directed by the Board in the case of the El Segundo plant of the company.

The company is opposed to any provision requiring the negotiation of objective standards. The company argued that no grievances have been filed by the union and that the union has never presented any plan or given any indication that it has ever had any experience with a plan such as is proposed. The company objects to the requirement that notice be given to an employee as to whether he has received an increase or not and the reasons therefor. The company states that quite frequently employees do not receive increases for reasons which are confidential and which should be left out of the record.

The claim was made by the company that what the union really wants is a wage review that would be automatic or semi-automatic, despite the fact that the plan already in effect provides a more rapid acceleration than would be approvable under the Board's present policy.

Recommendation

The issue presented in this case is similar to that presented in cases involving the El Segundo and Long Beach plants of this company as well as in many other cases in the airframe industry. The Board is thoroughly familiar with the arguments presented on this question, and it is unnecessary to repeat them in this report. It is sufficient to say that the Board has recognized the principle that unions have the right to negotiate appropriate standards which are to be followed in the awarding of merit increases. The majority of the panel believes that the facts in this case require that the issue here be determined in accordance with the practice which the Board has followed in many earlier cases. Accordingly, it is recommended, industry members dissenting, that the Board order the following provision:

"The Union shall have the right to negotiate with the Company appropriate standards to be followed in making merit increases within rate ranges. Once the merit plan has been established the Company shall be permitted to apply the standards of the merit plan. Any complaints as to the Company's action may be filed through the contract grievance procedure. Following a review, each employee and the Union shall be notified whether or not he has received a merit increase and the reasons therefor."

13. Vacation and Sick Leave

The union has requested that the vacation and sick leave plan be incorporated in the agreement and run for a period of one year, subject to the renewal procedure contained in the agreement.

The company argues that the Board should not order that these provisions remain in effect for more than 60 days beyond the life of the Board.

Recommendation

This issue is similar to the issue of whether the basic wage rates should remain in effect for the duration of the agreement. The same issue has been presented in previous cases involving the Douglas Aircraft Company. The majority of the panel, industry members dissenting, recommends in accordance with previous decisions that the vacation and sick leave plan remain in effect for the duration of the collective bargaining agreement.

14. Patents and Plant Suggestions

The union originally requested a provision whereby the employees would not be required to relinquish any rights to inventions which they have made or may make during their employment. Under the proposed provision, the company would have the right to practice all inventions voluntarily submitted as plant suggestions and would not be required to waive any shop rights. At the hearing, the union stated that, in view of the Board's directive order in the El Segundo case on this issue, it assumes that the Board would be unwilling to direct a provision as far reaching as the union originally proposed. The union requests, therefore, in the in-

terest of uniformity, that the Board order the same provision as was included in the El Segundo case, which is as follows:

"In accordance with the statements of the Company as to its present practice and intention, the employees subject to this agreement shall not be required, as a condition of employment, to transfer or agree to transfer any right to inventions which they have made or may make during their employment, except to the extent necessary to discharge, under any contract now in force or hereafter entered into between the company and the United States or any of its departments or agencies, the company's obligations to grant to the United States a nonexclusive, irrevocable license to practice such inventions free of royalty. The company shall have the right to practice all inventions voluntarily submitted as plant suggestions. Except as indicated above, the company or the employee does not hereby waive any right to ownership of or license to practice or any other rights to such inventions, which would accrue to them by operation of law in the absence of this article."

The union contends that the employees are entitled to the protection afforded by this provision and states that many instances could be cited where employees without such a safeguard have been dealt with unjustly.

The company is unalterably opposed to any provision in its contract which would prohibit it from requiring its employees to assign inventions made in the course of their employment "because it is a direct and unjustified interference with the right of the company to maintain and protect ownership of its property."

The company introduced, as an exhibit, a copy of its "patent contract" which provides:

"In partial consideration for my employment and for the benefits available to me under the employees' Patent Plan I hereby agree to disclose and assign to Douglas Aircraft Company, Inc., any and all inventions, improvements, and developments which I may make, invent, or suggest, either solely or jointly with others, during my employment by said Company, relating generally to any process, method, apparatus, article of manufacture, or thing, directly or indirectly of interest to said Company connected in any way with, or relating to, the work, tests, or future developments, and/or products of said Company, and to do all other acts reasonably required to insure that said Company shall obtain full title to such inventions, improvements, and developments, all in accordance with the provisions of the Employees' Patent Plan. I hereby certify that I have read said patent plan and understand its provisions."

The company stated that at the present time the employees who are within the bargaining unit are not required to sign this "patent contract." The company indicated that it intends in the future to require employees who in the course of their employment may be exposed to new developments to sign a patent agreement. The company said that while it has been successful up to the present time in operating under a system of voluntary assignment of invention rights, it will be necessary in the future to inaugurate a system of requiring the assignment of inventions within the scope of the company's business. During the war the company has disseminated valuable information concerning the improvement and advances both in the design of airplane and in the means and methods of producing the plane, the long result of which has been to weaken the company's competitive position. It is the position of the company that when the war is over and commercial operations are resumed it will be absolutely necessary for the company to be protected on any new improvements made by it in design and manufacture. "Any provision," the company contends, "which prohibits the company from asserting its exclusive ownership of improvements resulting from its own operations will obviously be detrimental to its welfare."

The company argued that there can be no question about the propriety of ownership by the company of inventions made by employees in the course of their work. The company provides the facilities and background for inventions and pays the employees wages while such inventions are being made. It is only equitable, the company argued, that it be entitled to the ownership of the patents covering the inventions.

The company points out that the patent agreement would cover only those inventions which are made within the scope of business operations and not those in an unrelated field. The company argued that the employee, by signing the agreement,

receives a consideration in return which is more liberal than that which is generally awarded to inventors. The company pays the employee for an accepted and patented invention regardless of whether any return is realized by the company. If the invention is practical and the company is successful in using it, the employee receives a percentage of the net royalties. The company considers the present arrangement to be eminently fair in view of the fact that the company bears all the expenses and suffers all the losses on any unsuccessful inventions, and considering also the fact the invention is the direct result of the operation of the company's business.

Recommendation

The union has argued that the directive order in the El Segundo case should be followed in the instant case in order to provide for uniformity. The facts of the two cases, however, differ significantly. In recommending a provision for the assignment of patent rights in the El Segundo case, the panel in its report said:

"The purpose of this provision is to set forth specifically in the collective bargaining agreement a prohibition which the Company says it has already imposed upon itself; namely, that no employee shall, as a condition of employment, be made to promise to relinquish rights to any inventions developed by him in the course of his employment."

Also, it is to be noted that the Board's directive order amended the panel's recommendation by including the following words at the beginning of the recommended provision:

"In accordance with the statements of the Company as to its present practice and intention * * *"

It is clear that the Board's order in the El Segundo case simply continued a practice which the company followed and from which it indicated no intention of departing. Such are not the facts in the Tulsa case. The panel and the Board have been put on notice by the company that it may be necessary for it in the not too distant future to inaugurate a policy of requiring employees who, in the course of their employment, work with or learn of new developments made by the company to sign a patent contract. The company contends this will be necessary if it is to maintain its competitive position in the industry during the postwar period. The panel majority concludes that the two cases are entirely different and that its recommendation in the instant case must be based on the facts and arguments as made in the instant case.

It must be emphasized that any patent assignment which the company might require of its employees would be limited only to inventions actually made in the course of and as a result of the employee's work with the company. If the invention is made by the employee in the course of his employment, it is the company which has made possible the invention. The company has furnished the tools, machinery, and equipment with which the employee works and has paid the employee his wages while the invention is being made. The training and knowledge necessary for the invention have been acquired by the employee as a direct result of his employment. The panel majority does not believe that, under these circumstances, the War Labor Board should accede to the union's request which would deprive the company of any right or ownership it might claim to have in the invention made by the employee. The panel majority, with the labor members dissenting, recommends that the union's request be denied.

It does not follow from this recommendation that the employee making the invention would be denied all benefits which might result from the invention or that he should not be rewarded for his invention. The company has stated that there now exists a patent plan by which the company pays the employee for an accepted and patented invention. If it develops that the invention is commercially practical and is used by the company, the employee receives a percentage of the net royalties received by the company. The union did not deny that a plan exists and no evidence was introduced to show that the plan had worked unsatisfactorily or inequitably. The merits or demerits of the plan were not argued before the panel. If the union considers that employees who make inventions in the course of their employment are inequitably rewarded, then it would appear that the appropriate remedy is for the union to negotiate with the company a revised plan rather than ask that the company give up whatever rights it may [have] to the inventions.

It might also be pointed out that this issue is principally of importance as a postwar problem. The union has not shown nor has it contended that employees have been or are at the

present being required to transfer any rights to inventions which they have made or may make. The company stated that it does not at the present time have any such requirement, but such a policy may have to be inaugurated in the future. The union's request, if granted, would therefore be of significance in the future. The majority does not believe that it should make a recommendation which may be of extreme importance to the competitive position of the company in the postwar period but which has not been shown to be of importance at this time. This appears to be particularly true when, as in this case, there is no showing that the requested provision conforms to any practice prevailing in the industry.

15. Assignability

The union requests the inclusion in the agreement of a provision stipulating that the agreement shall be binding upon the successors and assignees of the company. The union argues that such a provision is necessary in order to protect the membership against "sharp practices by companies who through the establishment of wholly owned subsidiaries or other changes in corporate structure would seek to avoid a collective bargaining agreement entered into between the parties."

The company objects to the proposed provision and contends that because the plant is wholly owned by the Government any assignability clause would operate against the Government. Neither the company or the Board should in any way, according to the company, place any restrictions upon the sale of the property.

Recommendation

The panel majority, labor members dissenting, recommends that this request be denied. The majority does not believe that the War Labor Board should place any restrictions upon the Government in any sale of the property which it might wish to make. And as pointed out in the Panel's report in the El Segundo case, "the majority believes that is is undesirable policy to impose a condition upon a prospective transferee who is not a party to the proceeding and who therefore can have no opportunity to be heard." The panel's recommendation in the instant case is consistant with the Board's decision in the El Segundo case.

Signed by Benjamin Aaron and Philip S. Brayton, public members; R. Randall Irwin and John Meade, employer members, subject to dissent on Issues 1 and 3; and Garry Cotton and Andrew Leiper, labor members, subject to dissent on Issues 2, 3, 5, 6, 7, 8, 10, 14, and 15, (opinion on Issues 3, 6, 7, 10, and 14).

Dissenting Opinion of Labor Members of National Airframe Panel

3. SETTLING GRIEVANCES

The labor members request the Board to read carefully the request of the union and the company's objections as set forth by the panel majority. It will be noted that the union's request confines the grievances to the provisions of the agreement. That a grievance may be filed covering a number of employees, may be initiated in Step 1 or Step 2 of the grievance procedure, and the settlement arrived at shall affect all where conditions are alike. This clause was proposed by the company and accepted by the I. A. of M. in the El Segundo agreement. The company now states, but offers no evidence, that it does not work so well in that plant.

The panel majority states, as a reason for denial, that the union failed to show that the provision has been included in any collective bargaining contract other than at the El Segundo plant of the company, yet the clause there was inserted in the contract at the company's request, and the panel majority require no evidence, only the statement by the company, that it has been unsatisfactory. Is this a recurrence of the desire on the part of industry to force all grievances as individual grievances so that they may break the union financially through arbitration? Since all grievances are confined to provisions of the agreement, the many arguments of the company and those set forth by the panel majority for denying this issue have no weight.

6. STANDARD WORKDAY, WORKWEEK, AND HOLIDAYS

The panel labor members do not agree with the policy of the Board in denying overtime provisions that cannot become effective until the restrictions imposed by Executive Order 9240 are removed. We believe these provisions should be ordered where they are customary in labor agreements

within an industry. The union's second request is as follows:

"Until the President of the United States shall proclaim that the national emergency no longer exists, the overtime provisions set up by the President's Executive Order No. 9240 and interpreted by the Department of Labor shall apply."

The labor members ask that the Board reverse the panel majority and order the above clause applicable. It is applicable at the present time. It makes applicable only those provisions within Executive Order 9240 as interpreted by the Department of Labor. These interpretations are prevalent in the industry inasmuch as most agreements provide for overtime payments for Saturday and Sunday as such.

The action of the panel majority is to deny both requests of the union, thus leaving the agreement without a clause covering overtime. Should the Board uphold the panel majority, the panel labor members request that the Board order contain as a base minimum the following clause:

"Time and one-half will be paid for time worked in excess of eight (8) hours per day or forty (40) hours in any one workweek (regularly scheduled six and one-half third shifts: Six and one-half (6½) hours per day or thirty-two and one-half (32½) hours per week, whichever is the greater); the workweek shall consist of seven (7) consecutive calendar days beginning at midnight between Sunday and Monday. In accordance with Executive Order No. 9240, doubletime will be paid only for work on the seventh (7) consecutive day worked in the workweek. Time and one-half will be paid for work performed on the sixth (6) day worked in the workweek. Time and one-half will be paid for work on the following holidays:

"New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day."

This is necessary to eliminate grievances.

7. SHIFT HOURS

The company's request should be denied. The National Labor Relations Act gives the union the right to bargain with the employer on hours of work. The parties have bargained on this issue and reached an agreement on the number of shifts and the hours of work of each shift. To give to some third party, not a party to the agreement, the right to void the provisions of a labor agreement, is in effect denying the union the right to bargain on hours of work. The clause as agreed to does not limit production in any manner. The company may work around the clock, 24 hours per day. It does not limit the number of hours employees may work. To say that someone not a party to the labor relations agreement, even though they be an agency of the United States Government, shall have the power to order a change in the hours of work reached by collective bargaining would establish "gestapo" tactics in spite of laws enacted to protect labor. If the Army Air Corps has any right as an employer in this case, they should meet with the union around the conference table during negotiations.

10. EXTRA HAZARDOUS WORK

Although the panel labor members may agree with the majority that the labor relations agreement contains ample protection in regard to safety devices, we cannot agree with the company that extra hazardous work has been taken into account in the original evaluation of all jobs. The factors of hazard taken into account in the evaluation are normal hazards only. Therefore the first paragraph of the union's request should be ordered:

"It is mutually agreed that rates of compensation for extra hazardous work will be set by agreement between the Union and the Company."

14. PATENTS AND SUGGESTIONS

Here the request of the union should be ordered by the Board. Not to do so, is to give to the company the right to force prospective employees to give to the company in exchange for a job, certain rights given to the employee by law. It is almost inconceivable that the War Labor Board, in a dispute case, will establish a condition whereby an employee must buy his job by signing away his lawful rights.

The only time the company has a right to require an employee to sign such a waiver of patent rights is in the case where an employee is hired for the express purpose of developing patents. No such employees are included in the bargaining unit. In the case of the employees covered by this dispute, the only rights the law gives to the employer are "Shop Rights" to a patent developed by an employee.

The company states that they have an employees' patent plan by which the employee benefits in any patentable development he may make. The union has no objection to this employees' patent plan so long as the employee becomes a party to it by choice and not as a condition of hire.

The majority state that, "The Company points out that the patent agreement would cover only those inventions which are made in the scope of business operations and not those in an unrelated field."

Granting this to be true, this statement refers to the "Employees' Patent Plan" to which the union does not object.

The union does object to an employee being forced to or, by subterfuge, required to sign away his rights as the price of his employment. The union is well aware of the type of patent agreement between the employer and the employee used in the aircraft industry which binds the employee to submit to his employer all and anything he may develop on or off the job during his employment and for from six months to two years after he leaves their employment. The company further states their intention to use this.

Therefore, will the Board grant the union's request or will the Board uphold industry's position of forcing the employee to sign over to the "boss" his lawful rights for the opportunity to earn a living?

Signed by Garry Cotton and Andrew Leiper, labor members.

MARITIME CASES—

Decision of National Board

In re MARITIME CASES.* Case No. 111-16640-D, et al., Aug. 31, 1945.

WAGES—TRANSITION ADJUSTMENTS—Merchant seamen—Increase offsetting wartime bonus—Consideration of "all equities"

To correct maladjustments and equities which would interfere with effective transition to peacetime economy, merchant seamen are entitled to general wage increases of 45 dollars per month to be effective from date of elimination of wartime "voyage bonus" which averages 53 dollars per month. Although "main assumption" of board in determining date and amount of increase is elimination of wartime bonus, Board's decision is based on all equities of case, including those arising out of substandard wages, overtime, and other contentions of unions.

For other rulings see Index-Digest 297. and 15.800 in this or other volumes.

Majority decision of Board. Public members concurring: George W. Taylor, Lloyd K. Garrison, N. P. Feinsinger, and Jesse Freidin. Labor members concurring: Van Bittner, John Brophy, Robert J. Watt, and Paul Chipman. Employer members dissenting: Clarence Skinner, Vincent P. Ahearn, Earl Cannon, and W. B. Maloney.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, and the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, etc.

I. Effective from the date of the elimination of the present "voyage bonus," each classification shall have added to its present base wage the sum of forty-five (45) dollars per month.

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

III. Since this directive order may involve a question of increased cost to the United States, the directive order shall become effective only if also approved by the Director of Economic Stabilization.

Statement of the Board

On July 19 and 20, 1945, the National War Labor Board held a public hearing on 17 maritime cases involving approximately 100,000 seamen in offshore dry cargo operations. Thirteen of these were new cases which arose on certification by the U. S. Conciliation Service. The other four cases involve a request for reopening of "closed" contracts in view of the similarity of issues with those in the open

*ED. NOTE: For list of companies, unions, and case numbers see p. 512.

contracts. A list of both groups of cases is attached.

The unions in the 13 cases now before the Board for decision ask for an increase in monthly base wages and for an adjustment in overtime compensation or a further wage increase in lieu thereof.* They contend that the requested wage increase is necessary (1) to eliminate substandard hourly wage rates; (2) to remove inequities as between seamen's wages and wages in comparable shoreside occupations; (3) to offset loss of wages and take-home pay resulting from past and anticipated reductions in war bonuses by the Maritime War Emergency Board; and (4) to insure the adequate manning of our merchant marine.

The operators object to any wage increase on the grounds that (1) present wages are not substandard, taking into consideration subsistence furnished by the employer and other contract benefits; (2) no true comparison can be made between offshore and shoreside occupations, but, if such a comparison were attempted, seamen's earnings, including "penalty overtime" and other contract benefits would compare favorably with earnings in shoreside occupations; (3) from their inception, war bonuses have been related solely to war risk; (4) a wage increase would impair the ability of the Merchant Marine to compete in peacetime with other forms of domestic transportation and with foreign flag vessels; and (5) no wage increase can be granted without a change in the national wage policy.

The Board believes that the facts in this case warrant the use of Executive Order 9599, issued by the President on Aug. 18, 1945 [26 War Lab. Rep., No. 3 V], which authorizes the Board "to approve, without regard to the limitations contained in any other orders or directives, such increases as may be necessary to correct maladjustments or inequities which would interfere with the effective transition to a peacetime economy; provided, however, that in dispute cases this additional authority shall not be used to direct increases to be effective as of a date prior to the date of this order."

The major premise of the unions underlying the "substandard" issue is that seamen are as much entitled as any other group of American workers to a wage which will enable them to marry and to maintain their families at a level of health and decency judged by the American standard of living. The operators do not deny this premise but contend that present wages are not substandard, taking into consideration subsistence, "penalty" overtime, and other contract benefits. The same conflict exists with respect to the comparison of seamen's wages and wages in comparable shoreside occupations. Whatever equities exist in support of the unions' position with respect to these two questions have been considered in connection with the total equities in the case.

The unions' request for a shortened workweek and Saturday and Sunday premium pay is supported by the adjustments made in recent years by governmental action or voluntary collective bargaining in other industries, likewise exempt from the Fair Labor Standards Act, including various forms of transportation † where, as in this case, the operations cannot practically be concluded at any specified time of the day or week. However, it is the Board's considered judgment, under all the circumstances of this case, that this equity should not be separately appraised but should be considered in connection with other equities bearing on the main demand for a general wage increase.

The Board has given careful consid-

* The specific demands are as follows:

NMU:—Fifty-five cents per hour minimum instead of the present alleged minimum hourly rate of 34⅜ cents (derived from present monthly base wage of $82.50 for assumed 240 hours) for an ordinary seaman and 41⅔ cents (derived from present monthly wage of $100.00 for assumed 240 hours) for an able seaman; present differentials between classifications to be preserved; time and one-half after 40 hours a week; time and one-half for Saturdays and doubletime for Sundays. The NMU also asks for the incorporation of the 100 per cent "voyage" or "steaming" bonus into the wage structure and such further increase as may be needed for a 55-cent per hour minimum rate.

SIU—55 cents an hour increase, 5 cents an hour in lieu of a 48-hour week. MC&S—same wage demand as NMU: time and one-half after 40 hours a week. MFOW&W—$50-a-month increase now and further increase up to $100, to offset past and future bonus reductions; or an immediate increase of $100 per month and elimination of the voyage bonus.

† The principle of a wage adjustment "in lieu" of overtime was instituted by President Roosevelt in the railroad industry. Operating and Non-operating Railway Employees—Brotherhood of Locomotive Engineers and Brotherhood of Railroad Trainmen and the Representative Carriers, Nov. 4, 1943, and Dec. 27, 1943. The same principle was applied by the War Labor Board in the trucking industry. Central States Area Negotiation Committees and the International Brotherhood of Teamsters (AFL), Cases 4448-4648 [14 War Lab. Rep. 247], February 1944. See also Interstate Steamship Company, Case No. 376 [6 War Lab. Rep. 567], Mar. 5, 1943.

eration to the operators' contentions as to the peacetime competitive problems of the Merchant Marine and the union's claim that a substantial increase is necessary to keep our ships manned and to maintain morale and efficiency. In this connection the Board has also considered the possible savings in cost of recruitment and training which would result from an increase in base rates sufficient to hold men who would otherwise return to shoreside occupations.

The remaining issue arises from the reduction in take-home pay incident to reductions in "war risk bonuses" which have already occurred and to their anticipated further reduction or complete elimination. Special bonus payments were originally instituted by collective bargaining several years prior to December 1941. On Dec. 18 of that year the Maritime War Emergency Board was established by agreement of the parties and given jurisdiction to determine the future course of war risk bonuses during the war. Just prior to the creation of that Board, the bonus rate for specified voyages had reached the level of $80 a month for unlicensed and 66 2/3 per cent for licensed personnel. It is estimated that this schedule represented, on the average, an additional payment of $61 per month for the unlicensed and 50 per cent for licensed personnel.

In its present form, the war risk bonus scheme as administered by the Maritime War Emergency Board consists of a voyage bonus, an area bonus of $5 per day in areas of particular risk, and a vessel attack bonus of $125. The voyage bonus alone at its maximum amounted to 100 per cent of the base wage or $100, whichever was higher. At present average earnings from the voyage bonus are $40 in the Atlantic, $72 in the Pacific, or $53 overall. All signs point to the reduction or complete elimination of the voyage bonus in the immediate future, leaving such risks as may still remain, such as the hazards of collision with floating mines, to be covered by the remaining area or attack bonus.

The unions contend that, since these bonuses were established by collective bargaining, they should not, in accordance with the Board's established policy, be disturbed except through collective bargaining. The Maritime War Emergency Board has stated, however, that, under the agreement by which it was established, "any action taken on war risk bonuses and war risk insurance superseded the provisions of existing collective bargaining agreements in so far as the latter were in conflict and were mandatory." * Any weight to be accorded to the fact that the bonuses were originally established by collective bargaining should be given in connection with the union's claim for retention of the bonus established by the Maritime War Emergency Board, based on the unanimous statement of the Maritime War Emergency Board in its Decision 2 C, issued June 18, 1945, reading as follows:

"Decision 2 C is in accordance with the policy which the Board has adopted of establishing a world-wide floor of 33⅓ per cent ($40 monthly minimum) below which bonuses will not be reduced during the period of the war, to which period the existence, activities, authority, and jurisdiction of the Board are definitely limited in accordance with the Statement of Principles and the letter of the President appointing the Board at the request and on the recommendation of the parties signatory."

It thus appears that the question as to what would eventually happen to this bonus "floor" was left open. Presumably, if not eliminated by the Maritime War Emergency Board itself, the bonus floor could be reduced or eliminated only through collective bargaining or through action of some governmental agency authorized to settle labor disputes. No realistic and final determination of the present dispute can be made without settling this issue. In this connection note may be made of the action already taken or about to be taken by Canada, Sweden, and Great Britain relating to the status of war risk bonuses after the war. In Sweden this action has taken the form of integration of a portion of the bonus into the wage structure. In Great Britain a similar proposal is under discussion.

The main assumption of the Board in determining what wage increase is appropriate and the effective date thereof is the complete elimination of the voyage bonus. Weighing all the equities in the case arising out of the issues of substandard wages, overtime, and the elimination of the bonus, and considering the fact that the wage increase will not be retroactive and the prospect that no part

* Letter dated Aug. 4 from John M. Carmody, chairman of the Maritime War Emergency Board, to Dr. George W. Taylor, chairman of the National War Labor Board.

of the increase will take effect for at least 30 days hereafter, the National War Labor Board is of the opinion that a fair and equitable determination of all wage and overtime issues in dispute calls for an increase of forty-five (45) dollars per month in the base rate for all classifications if and when the present voyage bonus has been completely eliminated.

The question raised as to whether the operators should be named in the contract as employers, or, as in the last contract, as general agents for the War Shipping Administration has no real significance.

Whatever the designation in the contract, the operators are the employers for the purposes of this dispute, as contemplated by the War Labor Disputes Act.†

There is likewise no real issue as to the so-called "closed" contracts involving the SUP, MM&P, and MEBA since the operators have indicated they are prepared to negotiate with these unions on the basis of the Board's decision.‡

List of Cases

Group I

111-16640-D General Agents of War Shipping Administration (East Coast) and National Maritime Union (CIO). The companies which are included are:

Agwilines, Inc.;
American Export Lines, Inc.;
American South African Line, Inc.;
American-West African Line, Inc.;
Black Diamond Steamship Corp.;
Grace Line, Inc.;
International Freighting Corporation, Inc.;
Lykes Bros. Steamship Co., Inc.;
Marine Transport Lines, Inc.;
Moore-McCormack Lines, Inc.;
North Atlantic & Gulf Steamship Co., Inc.;
Parry Navigation Company, Inc.;
Polarus Steamship Company;
Standard Fruit and Steamship Company;
Stockard Steamship Corporation;
Sword Line, Inc.;
United Fruit Company;
United States Lines Company;
West India Steamship Company;
Wilmore Steamship Co., Inc.;
Mystic Steamship Division, Eastern Gas and Fuel Associates;
American Foreign Steamship Corp.;
Blidberg Rothchild Co., Inc.;
Boland and Cornelius;
A. L. Burbank & Co., Ltd.;
Cosmopolitan Shipping Co., Inc.;
Dichmann, Wright & Pugh, Inc.;
Merchants & Miners Transportation Co.;
R. A. Nicol & Co., Inc.;
Norton-Lilly Management Corp.;
Prudential Steamship Corp.;
William J. Rountree Co., Inc.;
States Marine Corporation;
T. J. Stevenson & Co., Inc.;
U. S. Navigation Co., Inc.;
Wessel, Duval & Co., Inc.;
J. H. Winchester Co.;

111-15916-D Pacific American Shipowners Association and Marine Cooks' and Stewards Association (CIO);

111-16461-D Pacific American Ship-Owners Association and Marine Firemen, Oilers, Watertenders & Wipers Association, Inc.;

111-11488-D Waterman Steamship Corporation & Seafarers International Union (AFL);

111-11489-D South Atlantic Steamship Line & Seafarers International Union (AFL);

111-11490-D Missisippi Shipping Company & Seafarers International Union (AFL);

111-11491-D Smith and Johnson & Seafarers International Union (AFL);

111-11492-D American Range-Liberty Lines & Seafarers International Union (AFL);

111-11493-D Overlakes Freight Corp. & Seafarers International Union (AFL);

111-11494-D Eastern Steamship Lines & Seafarers International Union (AFL);

111-11495-D Alcoa Steamship Company & Seafarers International Union (AFL);

111-11496-D Seas Shipping Company & Seafarers International Union (AFL);

111-11497-D A. H. Bull Steamship Co., Baltimore Insular Line & SIU (AFL);

Group II

111-11428-D Pacific American Shipowners Assn. & Sailors Union of Pacific (AFL);

111-4649-D General Agents of War Shipping Administration (East Coast) and Masters Mates & Pilots (AFL),

†Sec. 2 (d) of the War Labor Disputes Act [9 War Lab. Rep. VII; WCDS 5] provides that the term "employer" shall have the same meaning as in Sec. 2 of the National Labor Relations Act. The latter section defines an employer as "any person acting in the interest of an employer, directly or indirectly. * * *"

‡Transcript of hearing, pp. 242, 243, and 320.

and Marine Engineers Beneficial Assn. (CIO);

111-4932-D & 111-1360-D General Agents of War Shipping Administration (West Coast) and Masters, Mates, & Pilots (AFL), and Marine Engineers Beneficial Assn. (CIO).

GENERAL MOTORS CORP.—

Decision of National Board

In re GENERAL MOTORS CORPORATION *and* UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (CIO), Case No. 111-16150-D; THE SAME *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT, AND AGRICULTURAL IMPLEMENT WORKERS (CIO), Case No. 111-15475-D, July 18, 1945 (made public July 22, 1945, corrected Aug. 14, 1945).

VACATIONS—Employees laid off because of cutbacks in war production—Down-graded employees

Employees who are eligible for vacation pay by virtue of seniority but who are unable to satisfy other eligibility requirements of contract because of layoffs due to reduction in war production are entitled to one-half of their normal vacation pay, where company made similar provision for laid off employees when plant was undergoing conversion to war production. Employees down-graded because of cut in war production shall be entitled to vacation pay on basis of pay rate immediately preceding down-grading.

Unions' requests that automobile company's vacation plan be liberalized to provide prorated vacations and to provide greater amounts of vacation pay than one and two weeks to employees with one and five years' service, respectively, are denied.

Unions' request that overtime and night-shift premium be included in computing vacation pay is denied.

For other rulings see Index-Digest 205.33 and 205.326 in this or other volumes.

Majority decision of Board. Public members concurring: George W. Taylor, Lloyd K. Garrison, and Edwin E. Witte. Employer members dissenting on vacation pay for laid off and down-graded employees: Vincent P. Ahearn, Clarence O. Skinner, and Hoey Hennessy. Labor members dissenting on denial of unions' demands for liberalized vacation plan: Van A. Bittner, James A. Brownlow, and Carl J. Shipley.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby decides the dispute and orders that the followed terms and conditions shall govern the relations between the parties unless modified by mutual agreement or further order of this Board.

I. The 1945 vacation plan of the General Motors Corporation shall be the same as for the year 1944 except as specifically modified in this directive order or by mutual agreement of the parties. The 1945 vacation plan shall include the following provisions:

"1. In lieu of a vacation with pay for the year 1945 [a sum] equal to forty-eight (48) hours' pay at each employee's rate of pay on July 1, 1945, not including overtime and night-shift premiums, will be paid each factory employee (including employees compensated on group bonus or piecework, based on the average hourly rate for the hours worked between Apr. 1, 1945, and July 1, 1945, exclusive of overtime and night-shift premium) covered by this agreement, having one year's seniority on July 1, 1945, who worked during the pay period beginning June 25, 1945, and ending July 1, 1945, in any General Motors plant or who has been laid off since May 1, 1945, or who has entered military service since July 1, 1945.

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* ED. NOTE: The Board's decision was made after it had held hearings. The disputes were not referred to any subordinate agency.

The General Motors vacation plan is negotiated annually, separate from the main agreements between the company and the two unions. The United Automobile Workers represents some 300,000 factory employees in 100 plants and the United Electrical, Radio and Machine Workers represents 31,000 employees in five plants (Frigidaire and Delco Products divisions, Dayton, Ohio; Packard Electric division, Warren, Ohio; Eastern Aircraft division, Bloomfield, N. J., and Delco Appliance division, Rochester, N. Y.).

The 1944 vacation plan provided that an employee with one year of service was entitled

"2. Each factory employee having one or more year's seniority who is ineligible for vacation pay under the preceding paragraph shall be entitled to full vacation based upon his seniority as of July 1, 1945, provided he has worked during 75 per cent of the pay periods between the dates of July 3, 1944, and July 1, 1945. In computing the time worked, employees shall be given accumulated credit for work performed in any General Motors plant during this period.

"3. Employees having five (5) or more years' seniority as of July 1, 1945, shall receive ninety-six (96) hours' pay in accordance with the above provisions.

"4. Employees who are eligible to a vacation on the basis of seniority but who have been unable to satisfy the other conditions for eligibility by reason of a layoff between January 1, 1945, and May 1, 1945, due to cutbacks in war production, shall be entitled to one-half of the vacation pay to which they would be eligible if they satisfied the normal conditions for eligibility. This provision shall not apply to any employee without reemployment rights or who was laid off for any reason other than the curtailment of war production.

"5. The vacation pay of employees who were down-graded between May 1, 1945, and July 1, 1945, due to a cutback in war production, shall be computed on the basis of their rates pay immediately preceding the downgrading.

"6. Irrespective of any employment or unemployment on the part of such employees, such payments shall be made on or before Sept. 1, 1945 unless the employee elects in writing to take such payment at a later date, but in any event, such payment will be made not later than Dec. 1, 1945."

II. All of the foregoing terms and conditions applicable to the parties shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

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to one week's vacation pay if (1) he was employed during the pay period including July 1, (2) was laid off after May 1, (3) entered military service after July 1, or (4) was employed in 75 per cent of the pay periods during the year ending July 1. An employee with five years' service was entitled to two weeks' pay in accordance with the same provisions. A week's vacation pay was equal to 48 hours' pay (average hourly rate if on bonus or piecework), such pay being exclusive of overtime and night-shift premiums.

The United Automobile Workers asked that the vacation eligibility provisions be so changed that seniority would be the only eligibility requirement. It also asked for vacation pay of 24 hours after six months' service, 72 hours after two years, 96 hours after three years, 120 hours after four years, and 144 hours after five years. In addition, it demanded that overtime and night-shift premiums be included in the computation of vacation pay.

The United Electrical Workers asked that vacation allowances be granted to all veterans and that the 75 per cent requirement apply to the last six months of the year instead of the entire year. It requested prorated vacation pay for employees with six months, two, three, and four years of service, such proration to be on the basis of the existing one-for-one and two-for-five plan. With regard to inclusion of overtime and night-shift premiums in vacation pay, its demand was the same as that of the United Automobile Workers.

The National Board's decision to amend the vacation plan in such manner as to provide vacation pay to employees who would otherwise be ineligible because of reconversion layoffs is in line with the vacation pay practice which the company followed with regard to conversion layoffs. (Board Press Release B-2167 and information supplied by WLB staff.)

WATERFRONT EMPLOYERS ASSN.—

Decision of National Board

In re WATERFRONT EMPLOYERS ASSOCIATION OF THE PACIFIC COAST *and* INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION (CIO). Case No. 111-11744-D, Aug. 18, 1945 (made public Aug. 28, 1945).

COLLECTIVE BARGAINING — Bargaining unit—Extension

Union representing longshoremen is not entitled to extension of contract's coverage to include car loading and certain other classifications where car loaders are at present covered by separate contracts so that question of change for them is within jurisdiction of National Labor Relations Board, and work of other classifications asked to be covered by contract is often performed by outside workers and through subcontractors.

For other rulings see Index-Digest 32,857 and 32,8201 in this or other volumes.

WAGES—COST-OF-LIVING ADJUSTMENTS—Increase agreed to prior to Jan. 1, 1941

Employees are entitled to five-cent cost-of-living increase retroactive to expiration date of prior contract, despite fact that general increases equal to 15 per cent have been granted since

Jan. 1, 1941. One general five-cent increase, though granted within period covered by Little Steel formula, was made pursuant to contract completed prior to Jan. 1, 1941, and should not, therefore, be charged against Little Steel allowance.

For other rulings see Index-Digest 245.313 in this or other volumes.

WAGES—GOING WAGE RATES—Comparison of West Coast with East Coast wages

Employees awarded five-cent cost-of-living increases are not entitled to further adjustment to eliminate alleged inequity between hourly rates paid for longshoring on East Coast and rates paid in West. Though hourly rate paid on West Coast is lower, equity is maintained with East Coast rates by fact that West Coast employers pay time and one-half overtime rate after six, rather than eight, hours a day.

For other rulings see Index-Digest 225.700 and 250.205 in this or other volumes.

PREMIUM WAGE RATES—Time and one-half after six hours a day—Hazardous work premiums—Skill differentials and penalty rates during overtime hours—Holiday premiums

Employers' request is refused for restoration of basic eight-hour day which prevailed prior to 1934 when National Longshoremen's Board awarded six-hour day, with payment of time and one-half thereafter, for purpose of spreading employment. Though purpose of six-hour day was not achieved, Board will not change eleven-year practice initiated through award of Presidential Board and extended by collective bargaining.

Employees are entitled to (1) increase in penalty rate for handling explosives and damaged cargo to eliminate inequity between West Coast penalty rates and those paid on East Coast, (2) extension of coverage of penalty rates on some cargoes so as to include handling of obnoxious cargoes under conditions not now requiring penalty, and (3) provision that receipt of penalty rate shall not render employee ineligible for skill differential. Union's demand for application of penalty rate to handling of reclaimed war material and poison gas is refused.

Union's request is refused that it be given power to establish penalty rates during contract period on commodities not now handled or not now covered by penalty rate schedule. Past experience does not support union's argument that character of cargoes is constantly changing, and, in absence of demonstrated need for flux, advantages of certainty of rates for period of contract should not be sacrificed.

For purposes of computing overtime pay, basic skill differentials and basic penalty cargo rates should be considered as part of rate for job.

Union is entitled to substitution of state-wide Election Days for General Election Day as holidays for which time and one-half is paid under contract, where such substitution will bring about uniformity in holiday practices of four West Coast ports. Demand for two hours off with pay on election days, however, is refused.

For other rulings see Index-Digest 140.472, 140.677, 37.370, 140.405, 140.201, and 65.410 in this or other volumes.

WAGE ADJUSTMENTS — Effective date of penalty rates

Increases in penalty rates for handling certain types of cargo should be retroactive to expiration date of prior contract but penalty rates for work not previously covered thereby should become effective as of date of Board's order.

For other rulings see Index-Digest 225.353 and 225.305 in this or other volumes.

WAGE DIFFERENTIALS—Job content as basis of differential

Union's request for uniform minimum skill differentials in all four West Coast ports for five classifications is denied except for classification of winch drivers which constitutes sole group whose different treatment in various ports is without satisfactory reason.

For other rulings see Index-Digest 235.220 in this or other volumes.

VACATIONS—Award of paid vacation

Longshoremen are entitled to establishment of paid vacation of one week, method of financing vacations, eligibility requirements, and other details to be negotiated by parties. In event of failure to reach agreement within 30 days, either party may refer issue back to Board for final decision.

For other rulings see Index-Digest 205.106 in this or other volumes.

EMPLOYEE BENEFITS—Denial of paid sick leave

Union's request for sick leave plan is denied since exhibits introduced by union to prove hazards inherent in longshore work were inadequate to warrant departure from WLB's policy

of not ordering sick leave plans in dispute cases.

For other rulings see Index-Digest 49.800 in this or other volumes.

UNION SECURITY — Preference of registration

Union which has preferential-hiring rights under present contract which provides for hiring hall is refused request that "preference of full registration" be given to union members here since purpose of request is to abridge right of employers to offer objections when names come up for registration. Employers, as well as union, have interest in character and quality of longshoremen employed.

For other rulings see Index-Digest 190.480 in this or other volumes.

DISCRIMINATION — Sex discrimination in employment

Union's request for anti-discrimination clause is granted. Word "sex," however, is deleted from requested clause since some women might claim physical adequacy for longshoremen's work and open way for disputes.

For other rulings see Index-Digest 48.001 in this or other volumes.

WORKING CONDITIONS — Work gangs—Assignment of men—Daily reporting—Maximum load limits—Duration of working conditions—Safety rules

Employers' request is refused for following changes in working conditions to promote greater efficiency in longshoring: (1) Restoration of "steady gangs" to take place of "casual gangs" when requested by employer, (2) authorization for each employer to assign men to jobs without regard to work for which they were dispatched, and (3) requirement of daily reporting by longshoremen at hiring halls.

In organization of work gangs of longshoremen, standard gangs should uniformly consist of ship gangs only, constitution of ship gangs should follow present port practice, and all gangs larger than standard and all longshoremen who are not members of regular gangs should be dispatched only as ordered by employer.

Employers' request for abolition of maximum sling load limits for longshoremen is denied but parties should renegotiate maximum limits for items presently listed where employers contend that load limits in effect have curtailed production. Proper limitation on size of load is measure of fair day's work which will avoid disputes and prevent undue speed or shirking.

Longshoremen engaged in a job assignment who fail to report and do not give union sufficient notice to permit union to obtain replacements shall pay a fine to labor-management committee within 30 days from date of offense to avoid having name struck from registration list maintained at hiring hall. In event of failure to report or obtain replacement three times in any contract year, loss of registration shall be mandatory, reconsideration to be permitted only if offense was entirely beyond control of gang member.

Contract providing for establishment for longshoremen of standard working and dispatching rules by coast labor relations committee and by arbitration if committee is unable to agree is amended to provide that all local port dispatching, working, and safety rules shall remain in effect until superseded by mutual consent, since, after Board has issued its order on employers' demands, neither party should have privilege of seeking another decision before a different tribunal.

Board denies union's request for mandatory safety code, to be decided by union-management committee in absence of agreement between parties, where employers have accident prevention bureau which has resulted in decrease in disabling injuries and, in view of unsatisfactory labor relations of parties, more harm than good might result from union proposal.

For other rulings see Index-Digest 330.001, 330.900, 330.920, and 330.600 in this or other volumes.

DISCHARGE AND REINSTATEMENT —Work rules violation

Board orders that discharged longshoreman should not be redispatched to employer who discharged him unless and until it is decided he was discharged without sufficient cause, where employers contended right of discharge is illusory if longshoreman discharged one day can be redispatched to same employer the next.

Penalties should be imposed on longshoremen for pilferage, drunkenness, and smoking in prohibited areas, maximum penalties for smoking and drunkenness to be discretionary with employer, but cancellation from regis-

tration to be mandatory on second offense for pilferage.

For other rulings see Index-Digest 46.150 and 46.255 in this or other volumes.

UNION AFFAIRS—Union hiring hall —Selection of dispatcher

Employers' request is refused that hiring hall dispatcher, now selected by longshoremen's union, shall be selected from among union membership by union-management committee. Dispatchers shall be selected by union, however, through elections in which all candidates shall qualify according to standards prescribed and measured by union-management committee, and shall hold office for one year. Both employers and union shall be permitted to maintain representative in each hiring hall at all times.

For other rulings see Index-Digest 190.480 and 172.790 in this or other volumes.

HOURS OF WORK—Travel time

Longshoremen presently paid one-way travel time from hiring hall to port are entitled to be uniformly paid both ways except that in San Francisco area, where parties are directed to negotiate on establishment of branch hiring hall, two-way travel time shall not be paid until hiring hall is opened.

For other rulings see Index-Digest 65.730 and 190.480 in this or other volumes.

GRIEVANCES—Arbitration of grievances

Board grants longshoremen's union's request for replacement of coast arbitrator by impartial chairman who shall preside over bipartisan coast committee and cast deciding vote in case of tie, thus shortening present procedure under which grievances not decided by coast committee are referred to coast arbitrator who must either hold formal arbitration hearing himself or designate port agent to do so. If dispute is not of coast-wide significance, impartial chairman shall, at joint request of parties, appoint port arbitrator to determine disputes unresolved by joint labor relations committee of port.

For other rulings see Index-Digest 60.732 in this or other volumes.

Majority decision of Board amending recommendations of panel. Public members concurring: George W. Taylor, Nathan P. Feinsinger, Lloyd K. Garrison, and Lewis M. Gill. Labor members dissenting on Pars. 1, 4, 6, 7, 9, 11, 12, 14, 15, 16, 20, 21, 22, 23, 26, and 41: James A. Brownlow, Robert J. Watt, Van A. Bittner, and John Brophy. Employer members dissenting on Pars. 2, 3, 10, 13, 17, 18, 19, 24, 29, 30, 32, 33, 36, 38, 39, 42, and 45: Vincent P. Ahearn, Clarence O. Skinner, Lee H. Hill, and S. Bayard Colgate.

Directive Order

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby directs as follows:

1. The union's demands with respect to "car loading" and "other classifications" are denied.

2. The employers' demand for the restoration of the eight-hour day is denied.

3. The straight-time hourly wage rate shall be increased by five cents an hour and the overtime rate by seven and one half cents an hour, the remaining allowance found due under the maladjustment formula.

4. The union's demand for a wage rate increase beyond the five-cent increase directed above is denied.

5. The union's demand for a uniform ten-cent skill differential for winch drivers is granted.

6. The union's demand for uniform skill differentials for hatch tenders, gang bosses, carpenters, and lift jitney drivers is denied.

7. The union's request relating to penalty cargo rate changes during the contract period is denied.

8. The union's demand for a straight-time penalty rate for explosives equal to the basic straight-time rate is granted.

9. The union's demand for an extension of coverage of the explosive penalty is denied.

10. The straight-time penalty rate for damaged cargo shall be increased from 55 cents an hour to 85 cents an hour.

11. The union's demand for a penalty rate on reclaimed war material is denied.

12. The union's demand respecting a penalty rate for handling poison gases is denied.

13. The union's demands for extension of present penalties in the handling of cement, dehydrated lime and

sulphur in sacks, uncrated chemically treated lumber, and refrigerated cargo are granted.

14. The union's demands for extension of present penalties in the handling of crated creosote and creosoted wood products and respecting hides in casks and barrels are denied.

15. The union's demand respecting an increased coverage of the head room penalty is denied.

16. The union's demand that the 20 cents' penalty rate presently paid to skilled classifications handling lumber and logs out of water be extended to all classifications is denied. The penalty rate "to certain gang members" for handling lumber and logs out of water be expunged from the contract since this item is covered by Sec. 18 of the Board's order relating to pyramiding of skill and penalty rates.

17. The general ten-cent penalty rate covering "lumber products loaded out of water" shall be retained but the modifying words "including only that part of cribs which has been submerged" shall be deleted.

18. The union's demand that basic skill differentials and basic penalty cargo rates be augmented by the normal overtime allowance during overtime hours and the union's demand that skill differentials be added to penalty cargo differentials, are granted.

19. The union's request that statewide election day be substituted for general election day is granted.

20. The union's request for two hours off with pay on election days is denied.

21. The Board directs that a paid vacation of one week be provided for employees covered by the contract in this case. The Board believes that the parties themselves are best able to negotiate the method of financing the vacations, the eligibility requirements, and other details, and the method of administration of an appropriate vacation plan. The issue is therefore referred back to the parties for further negotiation. If the parties are unable to reach an agreement within 30 days, either party may refer the issue or issues remaining in dispute back to the National War Labor Board for final decision.

22. The union's demand for sick leave benefits is denied.

23. The union's demand for a mandatory safety code is denied.

24. The changes in the basic straight-time and overtime rates shall be retroactive to and including Oct. 1, 1944. The extended penalty rates on cement, lime, sulphur, chemically treated lumber, refrigerated cargo, and unsubmerged lumber shall be effective as of the date of this directive order. Other changes in penalty and skill rates shall be retrocative to and including Oct. 1, 1944.

25. The union's demand that the contract may be reopened, in the event of any change in the "Little Steel" formula, is granted. The union's demand that any resultant wage adjustment be retroactive to the date of the revision of the formula is denied.

26. The union's demand respecting preference of registration is denied.

27. The no-discrimination clause requested by the union, except for the word "sex" is granted.

28. Sec. 11 (f) of the contract shall be amended to read as follows:

"All local port dispatching, working, and safety rules in effect at this time shall continue in effect until changed or superseded by mutual consent."

29. Sec. 12 of the contract shall be amended to read as follows:

"Semi-annually during the life of this contract the rates of pay and overtime rates shall, at the request of either party, be reviewed and, if the parties cannot agree shall, at the request of either party, be determined by the impartial chairman."

30. The employers' demand for the restoration of steady gangs is denied.

31. In respect to organization of gangs, the panel recommendation that standard gangs should uniformly consist of ship gangs only, that the constitution of ship gangs should follow present port practice, and that all gangs larger than a standard gang and all longshoremen who are not members of regular gangs shall be dispatched only as ordered by the employer is affirmed. The parties are directed to adopt an appropriate clause for this purpose, including a proper provision for the special condition prevailing in Portland.

32. The employers' proposal that "Dispatchers shall not dispatch unnecessary men to any employer, and each employer shall have the right to have dispatched to him the number

of men ordered and no more" is denied.

33. In respect to the right to assign men, the panel recommendation for denial of the employers' demand is approved without prejudice to the contention of either party as to the proper construction of the present contract. Any question concerning the proper construction of the present contract may be determined under the contract grievance procedure.

34. The union's proposal that the coast arbitrator be replaced by an impartial chairman who shall preside over the Coast Committee and cast a deciding vote in the event of a tie is granted. The union's proposal regarding port agents is modified to provide that the impartial chairman, at the joint request of the parties in any specific case, shall appoint a port arbitrator to determine a dispute unresolved by the Port Labor Relations Committee if, in the judgment of the impartial chairman, the issue involved in such dispute is not one of coast-wide significance.

35. With respect to daily reporting, the employers' proposal is denied. The panel recommendation that the following subsection be added to Sec. 11 is affirmed:

"Whenever a gang members fails to report and does not give sufficient notice to the Union to permit the Union to obtain a replacement, he shall be required to pay a fine of $25.00 to the Port Labor Relations Committee. If the fine is not paid within 30 days from date of the offense, the Port Labor Relations Committee may strike the name of such gang member from the registration list.

"In the event that the same man shall fail to report or to obtain a replacement, as provided above, three times in any contract year, loss of registration shall be mandatory.

"The Union may request the Port Labor Relations Committee to reconsider action taken pursuant to the above provision on a showing that failure to report or supply a replacement was due to causes entirely beyond the control of the gang member or the Union — but reconsideration may be requested only when there is a clear showing that no imputation of blame attaches to the gang member."

36. The employers' proposal for abolition of maximum sling load limits is denied, and the parties are directed to renegotiate maximum limits for the items presently listed in Section 11 (h).

37. The employers' request relating to discharged longshoremen, limited to the prevention of redispatching to the discharging employer, is granted.

38. The disciplinary penalties demanded by the employers, amended as follows, are granted:

"For pilferage, first offense: Minimum penalty, six months' suspension; maximum penalty, discretionary.

"For pilferage, second offense: Mandatory cancellation from registration list.

"For drunkenness and for smoking in prohibited areas, first offense: Suspension for 15 days; second offense: suspension for 30 days; succeeding offenses: minimum penalty, 60 days' suspension, and maximum penalty, discretionary."

39. The employers' demand that there be a minimum penalty of suspension for 30 days for all violations of the working requirements is denied.

40. The employers' proposal with respect to the operation of the hiring hall is denied, and the following panel recommendation is affirmed.

"The personnel for each hiring hall, with the exception of dispatchers, shall be determined and appointed by the Labor Relations Committee of the port. Dispatchers shall be selected by the union through elections in which all candidates shall qualify according to standards prescribed and measured by the Labor Relations Committee of the port. If they fail to agree on the appropriate standards or on whether a candidate is qualified under the standards, the dispute shall be decided by the impartial chairman or, at his discretion, by the port agent.

"Dispatchers shall hold office for one year and neither the constitution nor any rule of the union or any of its locals shall abridge the right of a dispatcher to hold office for one year or to run to succeed himself as often as he may choose.

"Both the employers and the union shall be permitted to maintain a representative in each hiring hall at all times."

41. The union's request that travel time be made a part of the straight-time workday is denied.

42. The employers' demand that branch hiring halls be opened at Long Beach and at Crockett is denied.

43. The panel recommendation that the parties be directed promptly to work out the details of a branch hiring hall in the East Bay area of the San Francisco harbor to the end that such a hall be opened at the earliest practicable date is affirmed. The details shall include appropriate changes, if any be required, in the travel-time rules of the San Francisco area, growing out of the opening of a branch hiring hall, as distinct from the two way travel-time rule mentioned in Par. 44.

44. From the date when the East Bay hiring hall is opened, travel time shall uniformly be paid both ways in the San Francisco area in all instances where travel time is paid at all.

45. From the date of this directive order, travel time shall be uniformly paid both ways in the Portland area in those instances where travel time is presently paid. It is not the intention that men in the Portland area should receive more than two way travel time, and the parties are directed to agree on language to eliminate the practice of duplicate travel time for working on more than one ship, after two way travel time has become effective in the Portland area.

46. If the parties fail to reach an agreement in respect to any issue which they have been directed to work out by negotiation, such issue shall revert to the National War Labor Board for final disposition. Such negotiations shall not affect the placing into effect of other provisions of this directive order.

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Pursuant to Executive Orders 9250 and 9328, as supplemented by the directive of May 12, 1943, the wage increases approved herein shall become effective only upon determination by the Office of Price Administration that these wage increases will not require any change in price ceilings or, if no such determination is made, then upon approval by the Director of Economic Stabilization. The parties will be notified promptly of the action of the OPA or the Director of Economic Stabilization.

Report and Recommendations of the Panel

May 25, 1945

PARTIES TO THE DISPUTE

The Waterfront Employers Association of the Pacific Coast, herein called the coast association, is a nonprofit corporation which represents its members in collective bargaining. Among its members are three other corporate associations, Waterfront Employers of Washington, Waterfront Employers of Portland, and Waterfront Employers Association of California. The direct employers, herein called the employers, are the members of these associations.

The labor organization involved, herein called the union, is District No. 1 of the International Longshoremen's and Warehousemen's Union affiliated with the CIO. The Union is subdivided into various locals representing approximately 15,000 West Coast longshoremen.

Save for a relatively small number of longshoremen in Puget Sound ports, the longshoremen and the waterfront employers are organized throughout the Pacific Coast in one union and one coast association.

Nearly 90 per cent of West Coast longshore work is done in 4 ports and their adjacent included areas. The average union membership of those ports for the period April 1944 through September 1944 was: San Francisco, 7,251 members; Los Angeles (San Pedro), 3,448 members; Seattle, 2,177 members; Portland, 1,361 members.

Longshore work, as referred to herein, is the work performed on ships, docks, and terminals in the loading and discharging of ships. Longshoremen are the men who do such work.

HISTORY

In May 1934, International Longshoremen's Association, affiliated with the AFL, then bargaining agent for Pacific Coast longshoremen, declared a strike on the Pacific Coast. The strike ended when the parties agreed to submit all issues to arbitration before the National Longshoremen's Board appointed by the President of the United States. The award rendered by he National Longshoremen's Board on Oct. 12, 1934 (Exh. G),

though amended in various particulars, has remained the general pattern of West Coast longshore agreements.

The International Longshoremen's Association declared a second strike around Nov. 1, 1936, which ended with the agreement of Feb. 4, 1937, between the International Longshoremen's Association and the port associations.

In 1938, pursuant to proceedings before the National Labor Relations Board, the union was certified as the collective bargaining representative of Pacific Coast longshoremen with the exception of those in three Puget Sound ports. At about the same time the coast association was formed. Accordingly, an agreement was executed effective Oct. 1, 1938 (Exh. K), between the union and the coast association on behalf of the various port associations. The port associations have varied from time to time, but the changes are not material.

Though the union gave timely notice of its desire to terminate the contract of Oct. 1, 1938, on Sept. 30, 1939, bargaining failed to bring agreement, and the parties by stipulation continued the contract of Oct. 1, 1938, pending further negotiations. These negotiations lasted for a period of some 15 months and resulted in the agreement of Dec. 20, 1940, herein called the longshore agreement (Exh. L).

The longshore agreement continued without change, other than wage increases referred to in the maladjustment section of this report, until Sept. 30, 1944, when it expired by virtue of notice duly given by the union. Save as to retroactive rights which the union may have respecting money items, the parties stipulated that the longshore agreement should remain in force pending negotiations, and, subject to that reservation, the longshore agreement is now in effect.

The proposals of the union with respect to modifications of the longshore agreement proved unacceptable to the employers; the proposals of the employers proved unacceptable to the union; and negotiations failed to resolve their differences. The U. S. Conciliation Service was invited to participate in the conference, and, when no agreement was reached, the proposals of the parties furnished the basis for the certification of the dispute to the National War Labor Board, herein called the Board.

The Board referred the dispute to a panel which held hearings in San Francisco in December 1944. A record of 1,371 pages was taken; 141 exhibits were offered; and briefs were submitted by the parties.

This report represents the opinion of the chairman of the panel which is concurred in by the labor member save for three exceptions which are specifically noted. When all three members agree, the word panel is used. The word majority signifies a dissent by the industry member. Opinions of the industry member and the labor member accompany this report.

PRINCIPAL PROPOSALS

The principal proposals of the union concern:

1. Extension of contract coverage,
2. Changes of wage rate,
3. Changes in skill and penalty rates,
4. Holidays, vacations, and sick leave,
5. Travel time, and
6. Grievance procedure.

The principal proposal is considered in relation to one of the employers' proposals respecting efficiency. The union's proposal relating to grievance procedure is considered near the end of this report. The employers' proposal respecting the elimination of the six-hour day is considered in relation to the wage proposal of the union.

In general, the union's proposals are considered first.

Contract Coverage

Car Loading

The longshore agreement covers the handling of cargo in its transfer from vessel to first place of rest and vice versa. The union proposes to extend the coverage to include the transfer of cargo from railroad car or barge to dock and vice versa. The additional work is performed by dockmen who, though members of the union, have operated under four separate car loading contracts with the four port associations. The union demands that car loaders and unloaders and dockmen be specified as occupations under the longshore agreement.

The four car loading contracts have expired, and disputes respecting their renewals have been certified to the Board. In two of these cases the union made the following alternative proposals:

(1) That car loading be covered by the longshore agreement, and

(2) That the car loading contract should accord with the longshore agreement.

The Board accepted jurisdiction as to Proposal 2 but declined to take jurisdiction as to Proposal 1, holding that Proposal 1 fell within the jurisdiction of the National Labor Relations Board.

The union's demands that the longshore agreement be extended to include the work of car loading and that car loaders and unloaders and dockmen be specified as occupations must be denied.

Other Classifications

The union asks that lashers, tommers, carpenters, cable splicers, cargo bracers, and liners shall be included by name in the longshore agreement.

Though the union says that workers in these classifications are at times specifically called for by the employers and supplied by the union, the evidence indicates that such labor is generally done under the longshore agreement as an incident to longshore work. It is, moreover, often performed by outside workers and through subcontractors.

The right of the union to bargain in respect to the incidental labor of its members is not disputed. In this very proceeding, the union has asked a differential for carpenter work and, though the request was opposed, the propriety of the demand was not questioned. If the union's purpose is to gain a preferential position in the named work classifications, no evidence has been introduced to support such a proposal, while the jurisdictional difficulties which might ensue would be complicated by a paragraph in the longshore agreement which says that, if the employers "shall subcontract work as defined herein, provision shall be made for the observance of this agreement."

The panel recommends that the demand of the union for the inclusion of the classifications mentioned be denied.

Wages and Hours

The Six-Hour Day

Throughout the longshore industry, for over 30 years, time worked between the hours of 5 p.m. and 8 a.m. has been paid at the overtime rate. Though the overtime rate has varied slightly over the years, it is now time and a half in practically all longshore contracts.

In one important respect, however, West Coast hours differ from East Coast hours. The East Coast operates on an eight-hour day; the West Coast operates on a six-hour day. Since the overtime rate, in any event, becomes operative at 5 p.m., the additional overtime accruing through the six-hour day affects only those West Coast longshoremen whose workday begins between the hours of 8 a.m. and 10 a.m.

The President's National Longshoremen's Board awarded the six-hour day in 1934 for the purpose of spreading employment. The union failed to supply replacements at 3 p.m., and the parties agreed by contract, following the 1937 strike, that no replacements should be made till 5 p.m. The longshore agreement contains this stipulation.

The employers propose to restore the eight-hour workday which prevailed prior to 1934 [1]. The employers argue that the alleged purpose of the six-hour day failed when replacements were refused after six hours of work and that the eight-hour day would conform not only to the prescriptions of the Fair Labor Standards Act and to shore labor practice throughout the country but to the entire longshore industry excepting only the area subject to the award of the President's National Longshoremen's Board. The employers concede that restoration of the eight-hour day must be accompanied by an equitable adjustment of the wage rate.

Allowing full weight to the employers' arguments, the panel cannot recommend a dictated change in an 11-year practice initiated through the unanimous award of a presidential Board and extended by collective bargaining. Labor's desire to curtail hours will not normally impel the Board to decrease the workday, but, in the absence of compelling reasons, existing privileges will not be impaired.

The majority recommend that the employers' demand for the restoration of the eight-hour work day which prevailed prior to 1934 be denied.

Maladjustment

In 1934 the straight-time longshore wage rate was fixed at 95 cents an hour.

Around September 1939 negotiations looking towards a new contract were initiated by the union. A contract was

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1 The first proposal of the employers, relating to hours, was that the eight-hour day should consist of eight straight-time hours, whether worked day or night. Though this proposal, which would presumably destroy the night differential, was never withdrawn, no argument was offered to support it, and the panel recommends that it be denied.

finally signed on Dec. 20, 1940. This contract stated that a wage increase of five cents an hour should be given in February 1941 "if by that time reasonable rates of production and efficiency * * * have been restored and reasonable compliance with this contract has been provided by the union."

By letter dated Feb. 19, 1941, the employers granted the conditional five-cent increase, effective Feb. 20, 1941, although they contended that the union had not fulfilled all of its obligations upon which the right to a wage increase was conditioned. In its reply letter bearing even date the union said it believed that it had done everything possible in fulfilling its part of the contract concerning the wage increase.

On Feb. 4, 1942, an additional increase of ten cents an hour became effective under an arbitration award.

No dispute arises respecting the ten-cent increase. The question is whether the five-cent increase of Feb. 20, 1941, is or is not to be debited against the permitted maladjustment allowance and whether, therefore, the union has five cents per hour due under the formula.[2]

The Board has said that wage rate increases made in January 1941 or in immediately following months as the result of previous protracted negotiations should not be offset against the maladjustment allowance.

The employers urge, however, that the preceding protracted negotiations ended in an agreement which showed that nothing was due on Dec. 20, 1940, though something might become due in February 1941; and that, since the employers' letter of Feb. 19, 1941, indicates that the union had failed to perform the conditions entitling it to an increase, the basis of the increase was unrelated to any contract provision, let alone any negotiations prior thereto.

The argument is not persuasive. Clearly, had a five-cent increase been granted on Feb. 20, 1941, following 17 months of negotiation, that increase would not have been an offset against the maladjustment allowance even though it had been accompanied by a letter stating that the employers doubted whether the increase should be granted. The introduction of a contract in December 1940 adds nothing to the picture save that it shows that a conditional agreement had been reached prior to the conventional dividing line of Jan. 15, 1941. The union's duty to restore efficiency has its place in this case but that place is unconnected with the doctrine of maladjustments.

The employers have further contended that, even if five cents were otherwise allowable under the maladjustment formula, the Board's doctrine in the Lever case [19 War Lab. Rep. 203] would preclude granting the increase. To sustain this position, the employers refer to no rates paid in the longshore industry but instead refer to lower rates paid to car loaders, freight handlers, and warehousemen in other industries where lower wage schedules have always prevailed and where the job content and conditions of work may, on the whole, be completely different.[3] No doctrine of the Board supports a denial of the maladjustment allowance based on such comparisons.

The majority recommend that the straight-time hourly wage rate be increased by 5 cents an hour and the overtime rate by 7½ cents an hour under the maladjustment formula.

Inequity

The parties agree that parity should exist between East Coast and West Coast longshore wage rates. The straight-time East Coast wage rate is $1.25 an hour, and the overtime rate is $1.87½ an hour.

The union initially claims a straight-time hourly wage rate of $1.25, urging that the advantage it enjoys under the six-hour day should be disregarded under Board policy. If that claim be disallowed, and the panel disallows it, then the union demands a straight-time hourly wage rate of $1.20 based on a round-the-clock comparison:

An East Coast longshoreman working the entire 24 hours of a day would receive 8 hours' pay at $1.25 and 16

2 Strictly speaking, the union would not be entitled to more than 15 per cent of 95 cents minus 10 cents, which equals 4¼ cents. However, rate changes have normally been in multiples of five cents, and the fractional difference was disregarded by the parties.

3 No proof of comparability has been offered by the employers, and the evidence (Exhs. 4 to 8) will not even support an argument based on a supposed historic relationship. In 1934 the wage rates of the named classifications varied from 40 cents to 50 cents an hour; they presently average nearly $1.00 an hour. Before the 1934 strike, longshoremen were paid 85 cents an hour; after the 1934 strike they were paid 95 cents an hour; today they are paid $1.10 an hour. The wage rates of the allegedly comparable classifications have approximately doubled. The wage rate of longshoremen has increased 30 per cent from the pre-1934-strike level and 16 per cent from the post-1934-strike level.

hours' pay at $1.87½ an hour, totalling $40 for the day.

A West Coast longshoreman working the entire 24 hours of a day at a basic rate of $1.20 would receive 6 hours' pay at $1.20 and 18 hours' pay at $1.80 an hour, totalling $39.60 for the day.

The employers, on the other hand, maintain that East Coast and West Coast wage rates are presently in balance, basing their contention on the respective earnings of an eight-hour day worked between 8 a. m. and 5 p. m.:

The East Coast longshoreman would receive 8 hours' pay at $1.25 an hour, totalling $10.00 for the day. The West Coast longshoreman would receive 6 hours' pay at $1.10 and 2 hours' pay at $1.65 an hour, totalling $9.90 for the day.

The union has reached its conclusion by assuming equal weight for all hours in the 24. The employers have reached their conclusion by allowing no weight to any hours other than the hours between 8 a. m. and 5 p. m. Neither assumption accords with the facts.

More work is done at day than at night, but some night work will always exist, and today on the West Coast night work is almost 40 per cent of total work. Similarly, under normal conditions, longshoremen tend to work eight hours a day, but there is often overtime, and today on the West Coast the workday is usually close to ten hours.

If West Coast longshoremen rereived a basic hourly wage rate of $1.15 an hour, the relation of their daily wage to the corresponding daily wage of East Coast longshoremen would show as follows:

8 hours of Daywork—West Coast + 3.5%

10 hours of Daywork—West Coast + 0.4%

8 Hours of Nightwork—East Coast + 8.7%

10 Hours of Nightwork—East Coast + 8.7%

Assuming that in normal times, and on the East Coast even today, the 8-hour daytime job is the prevailing type but assuming also an appreciable though incommensurable variation in overtime and night work, a basic hourly wage rate of $1.15 on the West Coast appears to constitute the closest practical equivalent to the present East Coast longshore wage rate.

Notwithstanding certain equitable considerations which are discussed in the succeeding paragraph, the chairman recommends that the union's demand for a straight-time hourly wage rate increase beyond the five-cent increase permissible as a maladjustment allowance must be denied as contrary to the national wage stabilization policy and likely to disturb rather than further the equality between East Coast and West Coast wage rates. (The labor member dissents, favoring a ten-cent total increase. The industry member dissents, favoring no wage rate increase.)

The union has drawn attention to the fact that West Coast longshore wage rates have increased less than 16 per cent over the past 10 years and, expressing a doubt whether another such instance can be found in an organized industry, urges that this fact is relevant in determining whether the wage rates presently paid are equitable. The employers have also supplied statistics (Exh. FF) which indicate that, notwithstanding the extraordinary increase in night work with its 50 per cent differential, the average hourly earnings of West Coast longshoremen have increased less than 30 per cent in 10 years' time. Over these same years the average hourly earnings of all manufacturing industries advanced 94 per cent and the average hourly earnings of durable goods industries advanced 103 per cent. The upgrading, progressions, and promotions which have profoundly affected earnings generally have not touched the longshore industry and, save for the 16 per cent wage rate advance and the increase of night work,[4] hourly earnings today would be where they were at the close of the 1934 strike.

These considerations, though they may not affect mandatory conclusions respecting wage rates, have been pondered when weighing other demands of the union which are not opposed to the national wage stabilization policy.

Uniform Skill Differentials

The longshore agreement provides that "for work which is now paid higher than the present basic rate, the differentials above the present basic rates shall be added to the basic rates established in this paragraph." In effect, this means that present

4 Overtime, as distinguished from night work, has not greatly changed, but there has been an increase of more than 90 per cent in take-home pay due to the vast increase of hours worked (Exh. EE).

port practices respecting skill differentials shall be continued. The union now proposes to fix minimum skill differentials in all four ports for five classifications which presently enjoy those differentials in some but not all of the four ports. The five classifications are winch drivers, hatch tenders, gang bosses, carpenters, and lift jitney drivers.

Winch drivers receive a ten-cent differential in Portland, Los Angeles, and Seattle. Only in San Francisco do winch drivers and hatch tenders receive no differential.

Winch drivers hold responsible positions and perform skilled work. No satisfactory reason has been advanced why the ten-cent differential should not apply to San Francisco nor why that differential should be denied to the single winch driver in Seattle.

The work of the hatch tender involves responsibility but demands relatively little skill. Moreover, as the employers have pointed out, the comparison with Los Angeles and Seattle is not accurate since hatch tenders in these ports are gang bosses as well.

Gang bosses receive a ten-cent differential in San Francisco and a 15-cent differential in Portland. No sufficient evidence was introduced to support the demand for an increased differential in San Francisco. What is more important, the granting of the union demand in respect to gang bosses would permit the introduction of the gang boss in Seattle and Los Angeles as a separate classification divorced from hatch tending, and no evidence was offered to support such a change.

The chairman recommends that the union's demand respecting a uniform ten-cent skill differential for winch drivers be granted and that the union's demands respecting uniform skill differentials for hatch tenders and gang bosses be denied.[5] The industry member concurs; the labor member dissents as to hatch tenders and gang bosses.

[5] The result will be that two differentials will be paid to so-called front men in each of three ports; to winch drivers and combination hatch tenders and gang bosses in Los Angeles and Seattle; to winch drivers and gang bosses in San Francisco. Only in Portland, following old practice, will skill differentials be paid to all three front classifications. In San Francisco, as distinguished from Seattle and Los Angeles and again following old practice, all three front classifications will continue to exist though skill differentials will be paid to only two. (See section of this report headed "Organization of Gangs.")

Carpenters do not generally receive a differential under the longshore agreement though they do get a ten-cent differential on certain army docks. In fact there are practically no longshore carpenters in any port though many longshoremen do rough carpentering as an incident to their work. No satisfactory evidence has been offered as to why a differential for carpenters should be created.

The panel recommends that the union's demands respecting a uniform skill differential for carpenters be denied.

The winch driver and hatch tender usually interchange work at regular intervals. When this occurs in San Francisco, each may receive a five-cent differential.

Lift jitney drivers receive a ten-cent differential in Portland and Seattle. They receive no differential in San Francisco and Los Angeles. Though the principle of equal pay for equal work should ordinarily be respected and arbitrary port differences should be eliminated, the record fails to prove that a lift jitney driver ranks higher than a longshoreman in skill, responsibility, hazard, and arduousness of labor, as such factors would be combined in any reasonable plan of job evaluation.

The chairman recommends that the union's demand respecting a uniform skill differential for lift jitney drivers be denied. The industry member concurs. The labor member dissents.

Penalty Cargo Changes During Contract Period

In addition to basic wage rates and skill differentials, the longshore agreement provides fixed penalty rates for certain specifically designated cargoes. The union asks that during the contract period the Coast Labor Relations Committee should have power to establish penalty rates on commodities not now handled or not now covered by the penalty rate schedule.

The union argues that the character of cargoes is constantly changing and that to deny the request would be equivalent to denying factory workers the right to have the rate of a new piecework job equitably determined.

The record does not sustain the union's contention. The present penalty cargo list was prepared by the parties in 1937. Following the lapse of seven years and the distortions of a world war, the union now asks for ten changes, of which only one involves a new cargo and two involve

alleged changes of practice relating to old cargoes. In the absence of demonstrated need for flux, the advantages of certainty should not be sacrificed.

The panel recommends that the union's request relating to penalty rate changes during the contract period be denied.

Specific Penalty Changes

Explosives

In two instances only has the union asked an increase in the straight-time hourly penalty rate of an existing penalty cargo classification. The first and more important of these is explosives.

The present straight-time penalty rate on explosives is 55 cents an hour. No penalty rate is paid on explosives during overtime hours. The union asks a straight-time penalty rate of $1.25 an hour and an overtime penalty rate of $2.50 an hour. These are the explosive penalty rates which have for years been paid and are today being paid in every important East Coast port.

The employer argues that the union disregards the higher penalty rates applicable to many West Coast cargoes and singles out, for the purpose of bettering its position, a particular classification where the East Coast has a higher rate.

There is nothing unusual in the union's approach and, even if the propriety of selective rate comparisons may generally be challenged, we have here a very special case. The world is at war; the quantity of explosives loaded has enormously increased; the degree of danger will be presumed by the workers to have enhanced accordingly; and the demand for an explosive penalty consonant with the penalty being paid elsewhere is charged with an emotional force as great as it is natural. Wise statesmanship does not disregard such forces.

The East Coast explosive straight-time penalty rate is directly related to the East Coast basic straight-time rate. Both are $1.25 an hour. Assuming that the West Coast straight-time longshore rate was fixed at $1.15 an hour, the straight-time explosive penalty rate should also be fixed at $1.15 an hour. All overtime penalty rates will follow the general rule referred to in a later section.

The union makes a second important proposal respecting explosives. Under the longshore agreement the explosive penalty rate is paid to all men working on the ship or barge while explosives are being loaded. The union demands that the rate should also apply to all men working in connection with a ship when other cargo is loaded after explosives have been stowed.

The record is meagre on the point. The employers claim that the amendment would mean that virtually every San Francisco longshoreman and a large percentage of others would constantly receive the explosive rate. An investigation made by the panel after the close of the hearing indicates that in the New York area the extended coverage asked by the union is practiced at certain piers. On the other hand, at other piers the penalty rate is paid to the men actually handling the explosives and is not paid to men working other hatches even during the stowage period. On balance, coverage is perhaps about equal in New York and San Francisco, and, in any event, the record will not support the union's request.

The panel recommends that the straight-time penalty rate for explosives shall equal the basic straight-time rate.

The panel further recommends that the union's demand for an extension of coverage of the explosive penalty be denied.

Damaged Cargo

The second request made by the union for an increase in the straight-time penalty rate relates to damaged cargo.

The present straight-time penalty rate for handling damaged cargo is 55 cents an hour. No penalty rate is paid for handling damaged cargo during overtime hours. The union asks a straight-time penalty rate of $1.25 an hour and a nighttime penalty rate of $2.50 an hour. These are the damaged cargo penalty rates which are presently paid in most East Coast ports. The specific West Coast damaged cargo penalty rate applies only when the cargo has been damaged through other causes; the penalty rate is fixed by the Port Labor Relations Committee as specified in a second paragraph. The union asks that the second paragraph be deleted, that the words "or other causes" be added to the first paragraph, and that a paragraph be included directing the employer to supply special

clothing and authorizing the Labor Relations Committee to direct payment for clothing damaged.

The employers ask that the second paragraph be deleted and that the first paragraph remain as it is, both in respect to rate and restriction of coverage.

The majority believe that the second paragraph introduces a salutary elasticity and that neither of the extreme proposals addressed to its deletion nor the unions request respecting clothing [6] should be adopted.

The present specific damaged cargo rate is low and is completely out of line with the prevailing East Coast rate. The compelling cause which prompted the panel to recommend the very large increase required to bring about equality with the East Coast explosive rate is, however, lacking.

Besides, the New York damaged cargo rate is subject to certain coverage restrictions, and the New York contracts contain no provision for arbitration of damage arising through other causes.

The majority recommended that the straight-time penalty rate for damaged cargo be increased from 55 cents an hour to 85 cents an hour.

Specific New Penalties

Reclaimed War Material

The union asks a penalty rate on reclaimed war material and says these words are intended to cover all types of miscellaneous used war material of mixed lots returned from overseas when such cargo has been rough stowed without segregation. Though the words vaguely suggest difficulties of unloading, the record is barren of evidence, and the panel recommends that the union's request be denied.

Poison Gas

Poison gases presently carry no penalty rate in any port. The union proposes that they carry the same heavy rate as explosives.

The union has failed to show that the handling of poison gas is obnoxious or hazardous. There may be danger, as there is some danger in all longshore work, but no authentic instance of injury has been disclosed.

The panel recommends that the union's demand respecting a penalty rate for handling poison gases be denied.

Extension of Present Penalties

Twenty-nine cargoes carry a penalty rate when handled in lots of 25 tons or more. The union asks an extension of coverage on five of these. No request is made for a change in the straight-time penalty rate of ten cents an hour.

All cement carries a penalty rate when cargo is discharged, but cement in bags with inner containers carries no penalty when cargo is loaded. The union asks that the exception be removed.

Though the use of inner bags may partly dissipate the obnoxious nature of the cargo, it seems clear that all cement is dusty and unpleasant. The employers' argument that cement is no dustier now than it was in 1937 appears to assume that the union may not attempt to better the bargain which it made seven years ago.

Lime carries a penalty rate when packed in barrels and loose mesh sacks. The union asks that the penalty include dehydrated lime and sulphur in sacks. The union also asks the penalty rate for chemically treated lumber, a new product defined in Union Memorandum 3.

The arguments respecting lime, sulphur, and chemically treated lumber are practically the same as the argument relating to cement. In addition, the evidence indicates that these cargoes crack the skin, affect the eyes, and injure the clothing.

Creosote and creosoted wood products carry a penalty rate unless crated. The union asks the penalty rate for all creosoted cargo.

Green hides carry a penalty rate. The union asks that a penalty rate be allowed for hides in casks and barrels.

The union has failed to show in what respect crated creosote products and hides in casks and barrels constitute obnoxious cargoes.

Refrigerated cargo carries a penalty rate. The union asks that the penalty rate should be extended to cover handling in lots of 25 tons or more or for more than 1 hour.

The war has changed the method of loading this cargo and greatly increased the time consumed. The employers contend that only part of the gang are in the refrigerator room at a time, but this was equally true under the old method of loading.

[6] It is not, however, intended that an arbitrator acting under the second paragraph shall be precluded from awarding a clothing allowance.

The majority recommends that the union's demands respecting increased penalty coverage in the handling of cement, dehydrated lime and sulphur in sacks, uncrated chemically treated lumber, and refrigerated cargo be granted. The panel recommends that the union's similar demands respecting crated creosote and creosoted wood products and respecting hides in casks and barrels be denied.

The union also demands that the head-room penalty now allowed to holdmen when head room is less than six feet during the loading of specific cargo be extended to all cases where there is less than six feet of head room.

Though combat storage has increased the amount of loading that must be done with low head room, all stowage tends to be in horizontal layers from floor to ceiling. Low head-room is so much a part of longshore work that to allow a general head-room penalty rate would be almost equivalent to a confused wage rate increase for holdmen.

The panel recommends that the union's demand respecting an increased coverage of the head-room penalty be denied.

Handling lumber and logs out of water now carries a basic 20-cent penalty rate to skilled classifications. The union asks that the rate be extended to all classifications.

The rate is actually composed of a ten-cent skill differential and a ten-cent penalty cargo rate which, with the modification below referred to, is specifically mentioned elsewhere in the penalty rate schedule. Since in the next section of this report the panel has recommended that skilled rates and penalty rates should be pyramided, the item is redundant and confusing.

The majority recommend that the union's demand be denied and that the penalty rate "to certain gang members" for handling lumber and logs out of water be expunged from the contract.

The majority also recommend that the general ten-cent penalty rate covering "lumber products loaded out of water" be retained but that the modifying words "including only that part of cribs which has been submerged" be deleted.

Skills and Penalties; Overtime and Pyramiding

Under the longshore agreement a skill differential is a bonus which does not change the wage rate of the recipient. A winch driver, for example, receives a straight-time rate of $1.10 an hour and an overtime rate of $1.65 an hour plus a constant bonus of 10 cents an hour.

Similarly, penalty cargo rates are usually flat bonuses of ten cents an hour, whether straight time or overtime, though here the longshore agreement includes a few exceptions.

The union demands that a differential, whether of skill or penalty, be construed as a rate difference. In the case of the winch driver this would mean that his straight-time rate would be $1.20 an hour and his overtime rate $1.80 an hour. In general, the result would be that overtime rates would be increased by one-half the skill or penalty differential.

The employers argue that the proposals involve a departure from time honored custom, that the longshore wage rate must be construed as a composite one for handling all types of cargoes in all kinds of ways, that present differentials (and particularly penalty cargo rates) were negotiated in 1937 on the assumption that they would not be increased during overtime hours, and that nothing has happened since 1937 to justify a change. Finally, the employers urge that neither the skill required for particular work nor the unpleasantness of a particular cargo changes with the clock.

The union argues that the rate of pay for any job is the total of compensation applying to its various elements and this is recognized in job evaluation plans that are becoming ever more prevalent. Skill, responsibility, hazard, arduousness, and obnoxiousness are the factors normally pondered in rate making, and these are precisely the factors that enter into skill and penalty differentials. Other American industrial workers are not told that such factors may not enter into the composition of rates because they operate with equal force at all hours or because their cogency was not recognized eight years ago.

An additional union demand respecting differentials must be considered. The longshore agreement provides that penalty rates shall not be added to skill rates and that, where both rates are appropriate, only the penalty rate should be applied. The union proposes that penalty cargo rates shall apply to all members of the gang except when otherwise specified.

In defense of the present arrangement, the employers urge that skilled men are often not affected by the na-

ture of the cargo and that, in two cases where they are affected, they receive both differentials. But, as the union points out, the gang is the job unit; the gang receives the penalty rate, and, save for skilled workers, no effort is made to exclude the unaffected. It is the skilled men only who are penalized when the gang to which they belong handles a penalty cargo.

The principal argument of the employers against the pyramiding of penalty and skill rates (and, in fact, against any change respecting the operation of penalty rates) is that the union seeks both to retain the fruits of the bargain it made in 1937 and to repudiate the effect of that bargain by demanding a more advantageous application of the agreed rates.

The panel finds no element of repudiation in a modest demand of the union which is consonant with the general practice of American industry. Past practice to the contrary notwithstanding, skill and penalty differentials may reasonably be considered the longshore equivalent of job classifications and may properly be treated as part of the wage rate for the purpose of calculating overtime. The fact that the work may require no more skill or labor during overtime hours than during straight-time hours appears irrelevant.

The majority recommend that the union's demands that basic skill differentials and basic penalty cargo rates be augmented by the normal overtime allowance during overtime hours and the union's demand that skill differentials be added to penalty cargo differentials should be granted.

Holidays

The longshore agreement provides for a minimum of eleven (11) holidays with pay at the overtime rate. No payment is made to men who do not work on holidays.

One of the holidays provided is general election day. The union asks that statewide election days should be substituted for general election day.

Longshoremen already enjoy statewide election days in California and Oregon. Granting the union's request would therefore bring Seattle into accord with the practice in the three other ports.

The majority recommended that the union's request respecting statewide election days be granted.

The longshore agreement provides that on election day the work shall be so arranged as to enable men to vote. The union proposes that men shall be allowed two hours to vote without loss of pay.

The employers point out that the union, already enjoying a bonus for working on a day when they would prefer not to work, asks a bonus for not working a part of the same day.

The panel recommends that the union's request for two hours off with pay on election days be denied.

Vacations

The longshore agreement contains no vacation provision. The vacation demand of the union was modified in the course of the panel hearings and culminated in the following proposal submitted subsequent to the hearings but prior to the filing of the employers' brief:

"Any employee under this contract who shall have worked seventy per cent (70%) of the average number of hours worked by all employees registered in that port shall receive an annual paid vacation of one week. One week's paid vacation is to be construed for this purpose as not less than thirty-six (36) hours nor more than forty-eight (48) hours at straight time. Each employee who has worked seventy per cent (70%) or more of the average hours herein set forth, absences due to sickness and injury excepted, shall receive a scheduled vacation equivalent to straight-time earnings for his average hours worked per week during the preceding vacation year within the limits set forth above.

"The vacation schedule shall be established by the Labor Relations Committee in each port, and every effort shall be made to provide vacations within the period from June 1 to Sept. 30. In order to minimize the problems of administration of this provision, the normal calendar year shall be adopted as the base period, or any other period that shall be mutually agreed upon.

"In order to effectuate this provision, a sum of not more than two and one-half cents (2½¢) per hour, day or night, shall be accumulated in a vacation fund by the employers signatory to this contract. The employers shall in no event be liable for such payments for time worked for any other employer. In the event that there exists at the conclusion of any vacation period a substantial surplus in the vacation fund, the vacation assessment may be reduced to whatever amount will guarantee the annual vacations for all eligible men as outlined above. In the event that the assessment of two and one-half cents

(2½¢) per hour proves insufficient to provide the vacations called for by this provision, vacation privileges shall be reduced accordingly."

The provision for a vacation pool instead of the conventional provision for a determinate allowance proceeds from the fact that a longshoreman works for various employers, some of whom are employers under the longshore agreement and some of whom, such as the United States Army, are not.

Vacation pools are admissible in such circumstances, but the panel believes that the specific plan proposed by the union can properly be criticized.

Seventy per cent of the average number of hours worked by all employees registered in a port is not a satisfactory determinant of the right to a vacation. Longshoremen in minor ports are often part-time workers, mainly engaged in other activities, and the average hours of work in such ports may be as low as 250 or less. Furthermore, the computation of average hours worked in each separate port introduces a highly complex factor which will increase administrative costs and lead to disputes. The panel believes that, following the practice of the vast majority of industries that prescribe work requirements as a condition of vacations, the determining minimum should be a stated number of hours.[7]

The crediting of hours lost through sickness is an expensive and dispute-breeding requirement. There is a rub of the green which cannot properly be eliminated by complicating the rules of the game.

Though the union's proposal covers the scheduling of vacations, it is silent respecting the administration of the plan and the division of the administrative expense.

To cure these omissions and defects the majority recommend the following substitute vacation provision:

"Employees under this agreement who, during the preceding contract year, shall have worked 1,500 total hours for employers under this contract and for other longshore employers including government agencies shall be beneficiaries of a one-week vacation with pay as mentioned below.

"In order to effectuate this provision, each employer under this contract shall pay to a vacation fund the sum of 2½ cents an hour for every hour worked for such employer by an employee under this contract. Payments shall be made monthly on or before the 20th day of the month next succeeding the work performed, except that payment for the period Oct. 1, 1944, to the month of the signing of this agreement shall be made within 30 days of the date hereof.

"The vacation fund shall be administered by the union which shall render a detailed annual report to the Waterfront Employers Association of the Pacific Coast and shall keep proper books and records to which that association shall have access.

"The cost of administering the vacation fund shall be paid out of the vacation fund, and the balance shall be disbursed to the beneficiaries pro-rata according to the number of total hours worked by each.

"Vacation schedules shall be established by the Port Labor Relations Committee, and every effort shall be made to provide vacations within the period from June 1 to Sept. 30 during every contract year.

"The figure of 1,500 total hours mentioned in the first paragraph of this section shall, at the request of either party, be reviewed at the end of any contract year. If the parties cannot agree, the proper figure shall at the request of either party, be determined by the impartial chairman."

In fixing the minimum requirement at 1,500 hours (the equivalent of 50 weeks of work of 30 hours each), the panel has exceeded customary practice. It has also exceeded the figure of 1,400 hours suggested by the union in its original vacation proposal. Longshore work is plentiful today in San Francisco and Los Angeles and adequate in Portland and Seattle. In none of these four major ports will a longshoreman have difficulty in working 1,500 hours a year. The employers have no money interest in the hour requirement which merely affects the number of longshoremen who will divide the vacation fund and the amount which each beneficiary will receive. The last paragraph of the recommended vacation provision

7 The February 1945 number of the *Monthly Labor Review* issued by the U. S. Department of Labor shows the distribution of manufacturing workers covered by paid vacation clauses, according to the type of work requirement. Specified hours per year is the work requirement of 63 per cent of such workers. Of these, 76 per cent are required to work precisely 1,200 hours, 6 per cent are required to work less than 1,200 hours, and 18 per cent are required to work more than 1,200 hours.

does, however, give either party the right to request a review of the minimum hours required at the end of any contract year.

The employers emphatically object to the union's vacation proposal. Some of the objections have been eliminated through the panel's substitute plan; most of them have not.

The employers argue that the proposal is not for vacation pay solely related, as vacations should be, to the work performed by specific employees for employers but as a payroll tax which the Board is powerless to impose.

Metaphors cannot, however cloud the fact that the employers are merely being asked to contribute in proportion to their use of longshore labor and that this is a fair method of fixing contributions. If the amount of the contribution is too great, the employers have a grievance, but no grievance arises from the fact that, for practical and equitable reasons, it becomes necessary to divide their contributions among longshoremen, some of whom work for other employers. It is the longshoremen and not the employers who will be the losers if these other employers fail to make like contribution.

As to the amount of the contribution, it is sufficient to point out that the union has not asked for more than one week's vacation even for the oldest employees, that 2 per cent of payroll is roughly calculated at the cost of a one-week vacation where no administrative costs are involved, that 2½ cents an hour is less than 1.7 per cent of average hourly earnings,[8] and that the administrative cost is, in effect, being paid by the workers since it is subtracted from the contributions made by the employers. These factors outweigh the fact that employer contributions cover the hours worked by nonbeneficiaries as well as beneficiaries.

Nearly three pages of the employers' brief are devoted to administrative objections, and the employers predict[9] that the administrative expense will exceed the "tax." If the panel were convinced that this estimate was accurate, they would be forced to increase the proposed contributions. The panel has recommended that, under proper safeguards, the vacation fund be administered by the union. The union believes the plan practical; the employers do not. To ask the employers to share the responsibility of administering a plan they consider unfeasible would be unfair to both parties.

The employers may, however, properly be requested to supply pertinent information which they possess.

The employers argue that the theory of vacations is founded on continuous employment and the need for relaxation. These conditions are not present in the instant case. Longshoremen work when they please and are absent when they choose. After periods of voluntary idleness they have the legal right to return to their dispatching hall and receive their share of the work of the port. These differences, the employers urge, distinguish the present case from other vacation pools referred to by the union in Exhs. 42 to 52.

Exh. 42 is an arbitration award by a Board of which Wayne L. Morse was chairman and relates to a controversy between a local of the International Longshoremen's and Warehousemen's Union and the Waterfront Employers Association of San Francisco. Among other things, the union demanded a vacation pool for ship clerks who are hired through a hiring hall and who work on a daily basis for varying employers, some of whom are not parties to the contract. No case precisely mirrors another, but the likeness here is striking.

Awarding a vacation, Mr. Morse answered arguments of the employers somewhat similar to those urged in the instant case, saying in part:

"The question and objections raised by counsel * * * go chiefly to the mechanics of administering such vacations and not on the merits of the issue. * * * The administrative problems raised by the employers' objections are not at all insurmountable. * * * The fact that a clerk may take time off at his own expense does not provide him with a true vacation privilege. * * * The chairman is satisfied that, if a casual clerk works a large share of the year within the

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8 Exh. GGI shows average hourly earnings as $1.45. To this must be added excluded penalty rates and the various increases recommended in this report.

9 The prediction is addressed to the union's vacation plan. However, the employers believe that the cost of administering a vacation plan conditioned upon the performance of a specific number of hours of work annually would be even more prohibitive. (Employer Brief, p. 92)

industry, he is as much entitled to a vacation as a monthly clerk. * * * If the principle of granting the casual daily clerks a vacation is sound, and the chairman is convinced that it is, then the fact that the union has not established in the record proof that any similar industry allows such vacations is of little or no consequence."

In an attempt to distinguish the above case from the present case, the employers urge that, under the ships' clerks award, the employer is permitted to hire steady clerks as well as daily clerks whereas the union has refused to supply steady gangs. The controversy respecting steady gangs is referred to in another part of this report. For reasons stated in the section headed "Efficiency," the majority do not believe that it is significantly related to the union's demand for a vacation.

The employers urge that the system now operative under the longshore agreement includes all of the elements of a normal vacation plan; the men enjoy a wage rate designed to compensate them not only for the work they perform but for their idle time as well. Assuming that the wage rate established in 1934 was intended to cover pay for time off as well as pay for labor, the portion of the wage rate imputable to time off has perhaps been dissipated over a ten-year period, in the course of which wage rates in other industries have vastly increased while the longshore wage rate has advanced from $.95 to $1.10.

The employers point out that no vacation is provided under any longshore contract. However, the instant case involves a large segment of the national longshore industry and covers a great area over which vacations have become practically universal. The extension of the paid vacation in that area as elsewhere has been achieved largely through the practice of the Board. The question is whether longshoremen should be excluded from the benefits of that practice.

Sick Leave

The union proposes that all registered longshoremen who have been continuously employed in the industry for at least three four-week periods shall be entitled to one day's sick leave per month, cumulative to not more than 15 days' sick leave in any one calendar year. The employers resist the demand.

The union recognizes that the Board has consistently refused to grant sick leave benefits in dispute cases but contends that this policy is conditioned on the absence of a clear showing of dangerous employment such as the union avers exists in the longshore industry.

To prove dangerous employment the union points to a survey made in 1930 which indicates that death for all types of employees was 8.7 per thousand and death of longshoremen was 11.46 per thousand. No West Coast longshoremen were included in the survey. The high rate of injury frequency is also shown in Exh. 61, to which reference is made in the next section. Aside from the probability of accident, the union urges that longshoremen necessarily work under hard conditions and often in the rain.

The proof submitted by the union scarcely seems sufficient to warrant an exception to Board policy. The panel recommends that the union's demand for sick leave benefits be denied.

Safety Code

Sec. 11G of the longshore agreement says that a safety code for longshore work shall be negotiated by the parties, and, if they shall not agree, it shall be arbitrated only by mutual consent. The union proposes that, in the absence of agreement, the code and any dispute concerning safety provisions shall be decided by the Coast Labor Relations Committee.

The only important evidence offered by the union to establish the necessity of a safety code is contained in a 1944 bulletin of the Bureau of Labor Statistics relating to the longshore industry in 1942 (Exh. 61). The bulletin observes that no other industry has a record even approaching the unfavorable longshore figure of 138 disabling injuries in every million man hours and adds that, on the basis of known understatements, it suspects that the true longshore injury-frequency rate was nearly 160. On the other hand, the bulletin shows that the Pacific area rate (122.3) is the lowest in the industry and gives some credit to the Accident Prevention Bureau of the Employers' Association.

The employers contend that they are the only group of organized employers which has an accident prevention bureau. This bureau spent $80,000 in 1944 and will spend $100,000 in 1945. It is the work of this bureau, say the employers, which accounts for

the marked decrease in disabling injuries since 1936 (Exh. W W). Considering the greater stress of work and the presence of a large percentage of new workers, the result is the more significant.

The bulletin of the Bureau of Labor Statistics shows that the injury experience was only slightly better on the West Coast than on the East Coast in 1942, but the War Shipping Administration recently reported an average West Coast payroll premium rate for stevedoring insurance of 8.6 per cent contrasted with an East Coast rate of 15 per cent, an impressive comparison.

The employers point out that under Sec. 11D of the longshore agreement, their right to institute methods of loading and discharging cargo is conditioned on the proviso that such methods are not inimical to safety or health. There have been many arbitrations on the point, and the employers have never questioned the authority of the arbitrator.

The employers urge that such individual arbitrations when united with the educational work of the accident prevention bureau, which has resulted in the setting of high voluntary standards, constitute a far wiser procedure than the attempt to write a mandatory code covering a host of complex and diverse conditions.

Taking present conditions and the unsatisfactory labor relations of the parties into account, the panel fears that more harm than good might result if the union's proposal were presently adopted. The panel recommends that the union's demand for a mandatory safety code be denied.

Retroactivity

The union demands that changes in basic wage rates, skilled wage rates, penalty cargo rates, and vacation allowances be retroactive to Oct. 1, 1944, the day following the expiration of the longshore agreement. The union urges that its proposal follows normal Board practice and that collective bargaining would break down at the termination date of a labor contract if money items were not made retroactive.

The employers, citing certain cases (Employers' Brief, p. 102), argue that retroactivity, under Board policy, applies only to wage rates.

The majority believe that, in the main, the union's position respecting skill and penalty differentials is sound. These are, in effect, changes in the wage rate for certain classes of workers and certain types of work. Employees should normally receive what they would have received had a decision been reached prior to the expiration of the contract, and this is the more true where the parties have acted promptly and a long delay has intervened through causes beyond their control.

The chairman believes, however, that an exception should be made on minor items in respect to which the lapse of time impairs the data on which the calculation must be based and where, in consequence, the expense involved and the probability of disputes outweigh the benefits that might accrue.

Accordingly, the chairman recommends that the extended penalty rates on cement, lime, sulphur, chemically treated lumber, refrigerated cargo, and unsubmerged lumber be effective as of the date of the Board's directive order and that all other recommended changes in penalty and skill rates,[10] together with the recommended changes in the basic straight-time and overtime rates, be retroactive to and including Oct. 1, 1944. The labor member dissents to the exceptions and holds that all rates should be retroactive. The industry member dissents to all retroactivity with the exception of straight-time and overtime wage rates.

The majority recommendation respecting vacations, given in the section bearing that title, covers the effective date.

Little Steel Reopening

The union demands (1) that the contract may be reopened in the event of any change in the Little Steel formula and (2) that any resultant wage adjustment shall be retroactive to the date of the revision of the formula.

The employers do not oppose the first demand. The union has put in no evidence or argument supporting the second demand.

The panel recommends that the union's first request be granted and

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10 Assuming good faith, disputes should not arise in respect to retroactive penalty and skill rates where a lower rate was previously paid nor in determining the money due to those winch drivers who heretofore received no differential nor in adding skill differentials to penalty rates. Some difficulty there may be in respect to overtime penalty rates on explosives and damaged cargo, for here no overtime penalty rate was previously paid; but the loss to the worker on these items might be so great and would certainly be so unfair that the importance of a retroactive correction must be deemed to outweigh the trouble and expense.

that the union's second request be denied.

Preference of Employment

Preference of employment is given to members of the union under the longshore agreement. The union asks that preference of full registration shall also be given to union members.

The parties agree that the union now enjoys preference of registration, and the request might therefore be construed as a proposal to make the practice explicit. Testimony offered by the union indicates, however, that what is really intended is to abridge the right of the employers to offer an objection when a name comes up for registration. The employers, as well as the union, have an interest in the character and quality of longshoremen. The denial of that interest does not become more persuasive by calling it "preference of full registration."

The panel recommends that the demand of the union respecting preference of registration be denied.

Discrimination

The union asks that the employers agree not to discriminate because of union membership and activities, race, creed, color, sex, religious or political beliefs, or national origin.

The employers object because, since no claim is made that discrimination is practiced, the question is academic and because, since they exercise no effective power to hire, assign work, or discharge, it would be beyond their control to either enforce or violate the rule.

Such a clause is not, however, intended to indicate past discrimination or to imply that the employers have powers greater than they, in fact, possess. The clause has become a commonplace in labor contracts. It satisfies a commendable desire of the union without harming employers who, like these, do not discriminate.

The employers especially object to the provision which would prevent discrimination because of sex, and the point is well taken. It is no answer to assert that objection to an applicant on the ground of unsuitability to do longshore work is not discrimination because of sex. Here and there some woman would assert physical adequacy and open the path of dispute.

The panel recommends that the union's request for a discrimination clause should be amended by deleting the word "sex" and, as so amended, should be granted.

Efficiency

The employers contend that, beginning with the close of the 1934 strike, there has been an increasing decline in the efficiency of longshore work. This decline in efficiency is cited as an additional reason for opposing the union's demands; it is also urged in justification of specific reforms proposed by the employers.

Four factors enter into the employers' claim of inefficiency:

1. The reference to efficiency in the longshore agreement of 1940,
2. The reference to efficiency in the arbitration award of 1942,
3. Statistics respecting the discharge of sugar and copra, and
4. Testimony respecting the handling of lumber.

A brief analysis of these factors follows.

Sec. 12 of the longshore agreement of 1940 (being the same longshore agreement which expired on Sept. 30, 1944) reads, in part:

"Commencing on the date hereof and continuing during the life of this contract, the Coast Labor Relations Committee shall conduct investigations and a survey looking towards *the restoration of reasonable efficiency (excluding comparisons prior to Jan. 1, 1935) in the performance of longshore work* and reasonable compliance with the provisions of this contract, which the union agrees to provide and maintain during the life of this agreement.

"On Feb. 1, 1941, a wage review shall be conducted * * *, the Employers agreeing that, if by that date reasonable rates of production and efficiency (excluding comparisons prior to Jan. 1, 1935) have been restored and reasonable compliance with this contract has been provided by the union, a wage increase * * * shall be granted. * * * Semi-annually thereafter, the rates of pay and overtime rates prevailing shall, at the request of either party, be reviewed, and, if the parties cannot agree, shall, at the request of either party be determined by the Coast Arbitrator, and in all such wage reviews wage levels shall be considered in conjunction with the obligation of the union to provide reasonable compliance with the provisions of this agreement."

The words which have been italicized by the panel indicate an agreement by the parties that efficiency had dropped between 1935 and 1940 and that, though no attempt should be

made to restore the prestrike production standards of 1934, the reasonableness of increasing efficiency above the 1940 level was recognized by the union as well as the employer.

Though the company granted the wage increase mentioned in the second paragraph of Sec. 12, they wrote that, while they were "glad to acknowledge a steady decline in work stoppages, * * * there has been no appreciable restoration of reasonable efficiency." The union replied that a survey and joint reports indicated "that in the big majority of cases the orders of the employers have been obeyed, employers' methods of operation respected, and cooperation and willingness of the men to do a fair day's work have largely improved."

As to the degree of improved efficiency in February 1941, we have only the declaration of the parties, but a year later, following wage review hearings, Wayne Morse handed down an arbitration award (Exh. O) which granted the union a basic wage increase of ten cents an hour and contained the following language:

"* * * This arbitrator, as the result of his several years' experience in arbitrating disputes within the industry and observing work practices in various ports of the Coast, wants to say very frankly, here and now, that there is merit in the employers' contention that the longshoremen have not fully performed their work efficiency obligations under their collective bargaining contract, * * * and he wishes to make perfectly clear to the longshoremen and their leaders through this decision that, based upon his experience in the industry as arbitrator of a large number of cases, he is satisfied that certainly by the time the parties signed the agreement of Dec. 20, 1940, there was a need for a restoration of reasonable efficiency in the performance of longshore work and a need for a more reasonable compliance with the provisions of the previous collective bargaining contracts. It doesn't help the cause of industrial harmony within the industry to deny these facts.

"The negotiations leading up to the contract of Dec. 20, 1940, the language of Sec. 12 of that agreement, the minutes of the labor relations committees, the publications of the union, the correspondence between the parties, the testimony of witnesses, the records of previous arbitration cases, and the observations of the arbitrator on the waterfront all supported the inescapable conclusion that there has been a need for an improvement in the work efficiency of longshoremen."[11]

To fortify the inferences that may be drawn from the references to inefficiency in the longshore agreement of 1940 and the arbitration award of 1942 and to show that efficiency continued to decline after 1942, the employers have introduced statistics respecting the discharge of sugar and copra.

Exh. II is a graph showing the number of bags of sugar discharged at Crockett per gang hour during the first six months of each of the three years: 1935, 1941, and 1944. Due, the employers claim, to deliberate attempts on the part of the union to decrease the tonnage handled, discharges dropped from 1,600 bags to 1,250 bags during the six months of 1935. In 1941 discharges dropped to an average of 980 bags. In 1944 the average fell to 765 bags. Thus, the number of bags of sugar discharged per gang hour dropped 52 per cent between January 1935 and 1944 and 22 per cent between 1941 and 1944.

Exh. JJ shows the average tons of copra discharged per net gang hour for each of four selected periods: (a) Jan. 1 to Mar. 31, 1935,—selected as the first period subsequent to the 1934 strike; (b) Oct. 1, 1940 to June 1941—selected as the period prior to the discontinuance of steady copra gangs; (c) June 1941 to Dec. 31, 1941, —selected as a period of casual gangs up to our entry in the war; (d) January 1942 to Sept. 30, 1944—representing production after our entry in the war.

The percentage changes in average tons of copra discharged per net gang hour were:

From (a) to (d)—a Drop of 47%
From (b) to (d)—a Drop of 38%
From (c) to (d)—a Drop of 12%

Tonnage of copra handled per month fell from 6,300 in the (b) period to 5,200 in the (c) period and to 1,400 in the (d) period. Tonnage of sugar handled at Crockett also fell, but the record does not show how

[11] On the other hand, Wayne Morse said that "it was the employers who failed to complete the matter (of establishing uniform working and dispatching rules) by arbitration." Many of the specific reforms now requested by the employers involve standardization and clarification of these same working and dispatching rules.

much. The smaller quantity handled may directly have affected production. Indirectly it certainly had an effect through the discontinuance of skilled gangs. Skilled gangs were supplied by the union after it refused to supply preferred gangs who worked for a single employer. The existence of skilled gangs is, however, conditioned on the existence of a sufficient quantity of their particular work, and in the case of copra, at least, that condition has not prevailed. The existence of skilled gangs is also conditioned on the willingness of longshoremen to do more exacting work for no greater pay, and both skilled sugar and skilled copra gangs will disband when standard longshore work is as plantiful as it is today. Moreover, there has been an unavoidable influx of inexperienced men into the industry, and the employers themselves attribute the fall of sugar production over the past three years mainly to this cause.

The same is true of lumber, respecting which the employers testified to an estimated 25 per cent fall of production but also testified that little change has taken place since 1941. The employers attribute lower production to the influx of inexperienced men and the loss of preferred and skilled gangs. The skilled men are unavailable partly because they have left the industry and partly because they prefer the less arduous longshore work presently procurable. No statistics having been offered respecting lumber. Nothing approaching an accurate analysis can be made.

Besides using the arguments implicit in the preceding analysis, the union answers the employers' claim of decreased efficiency by pointing out that the data is meager and that it covers only three specialized operations, selected by the employers, which are neither quantitatively nor qualitatively representative of industry practice. The union further urges that to infer decreased efficiency from decreased production involves a fundamental logical fallacy since it confuses sufficient cause and necessary cause. Decreased production may be the effect of a host of causes, no one of which should be rashly selected as the probable determinant.

As to the Wayne Morse opinion, the union urges that the references to inefficiency were merely dicta in an arbitration award which, after all, granted the union a basic wage increase of ten cents an hour; and the union has introduced quotations from the transcript of the hearings in August 1943 before the Senate Subcommittee on Military Affairs indicating that that subcommittee absolved all parties from the charge of inefficient operations.[12]

The union drew attention to the fact that the Senate Committee on Military Affairs in reaching its conclusions had given consideration to statistics of the Navy Department, the Department of War, and the War Shipping Administration, all dealing with longshore production and a comparison of East Coast and West Coast efficiency. Such government figures had already been alluded to by the employers, and the parties stipulated that the panel should, if possible, secure and utilize these statistics, none of which had previously been made public.

Accordingly, the panel procured figures from the agencies mentioned and a brief analysis of the Army and War Shipping Administration statistics will be found in the last section of this report. In the meantime it will be sufficient to say that the government agencies properly express a doubt respecting the value of their figures and that, to the extent that they point to a conclusion, they indicate no important difference between East Coast and West Coast efficiency.

The union has not commented on its recognition of the need for increasing efficiency in the longshore agreement, and the existence of appreciable inefficiency in 1940 must be assumed. The pertinent language of Wayne Morse cannot be brushed aside; whether dicta or holding, it argues that little improvement had taken place in February 1942. The union does not maintain that efficiency has increased since 1942. It has, however, pointed out that recent decreases in efficiency were caused by the unavoidable influx of inexperienced men into the longshore industry and that skilled gangs cannot be maintained when there is insufficient work of their particular type and when less arduous

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12 See Tr., pp. 1021 to 1024. Senator Downey said in part: "The Committee finds that longshoremen on the West Coast have done and are doing a very creditable job and that, in spite of many war conditions which have materially decreased longshore efficiency elsewhere and would normally have done so here, the efforts of the individuals, unions, employers, and government agencies involved have succeeded in maintaining and even somewhat increasing the efficiency of longshore operations on the Pacific Coast."

longshore work is procurable for the same pay.

The majority have allowed little weight to the inefficiency argument in pondering the money demands of the union. This is no wage review under a contract, and the majority are convinced that the Board should not change the criteria by which it normally judges whether such demands should be approved. Many practices of which the employers complain have prevailed for more than ten years and none for less than five. No breach of contract is alleged, and the union may well maintain that it has consistently acted under the longshore agreement.

Though the union may sometimes have resolved ambiguities in its favor, the employers do not appear to have challenged such interpretations by demanding arbitration. Even if each of the separate complaints of the employers were justified, so chronic and obscure a disorder cannot be remedied and should not be punished by denying longshoremen the limited benefits to which they are entitled under their country's wartime policy.

What should be done in respect to the specific reforms proposed by the employers involves a nicer question. All of these demands concern practices of long duration; some of them involve conditions unusual in labor contracts. Furthermore, though the employers point to the exigencies of war as an added reason for granting each of their demands, it is not clear that the advantage gained would always outweigh the disruption caused by the supplanting of old customs, some of which, the union urges, support its basic principles and perhaps its prosperous existence. However, while not disregarding these facts, the panel is convinced that certain reforms should be instituted for the good of the entire industry and that the employers' specific proposals should be judged on the merits.

Most of the employers' affirmative demands fall under the working and dispatching rules of the ports. Sec. 11 (f) of the longshore agreement provides for the establishment of standard working and dispatching rules by the Coast Labor Relations Committee and by arbitration if the Committee is unable to agree on such rules. Though the union initiated an arbitration, it was never concluded, and the section has, in effect, been a dead letter. It should now be deleted for, after the Board has issued its directive in respect to the employers' affirmative demands, neither party should have the privilege of seeking another decision before a different tribunal. Accordingly, the panel recommends that Sec. 11 (f) be amended to read:

"All local port dispatching, working and safety rules in effect at this time shall continue in effect until changed or superseded by mutual consent."

Attention is drawn to the portion of Sec. 12 previously quoted in this section of the chairman's report. The employers, urging that the reforms sought by them have never been achieved through the cooperation of the Coast Labor Relations Committee and the union as provided in Sec. 12, have asked the Board to pass on their discrete demands. When the Board directs the inclusion in the agreement of those proposals which it deems appropriate, the employers will receive the precise relief to which they are entitled in substitution for the vague and unattained relief previously provided. They should not, however, be permitted to obtain redress and retain the benefit of a contingent penalty. Accordingly, the majority recommends that Sec. 12 be amended to read:

"Semi-annually during the life of this contract the rates of pay and overtime rates shall, at the request of either party, be reviewed and, if the parties cannot agree, shall, at the request of either party, be determined by the impartial chairman.

Steady Gangs

Sec. 11 (a) of the longshore agreement reads in part:

"The Employers shall have the right to have dispatched to them, when available, the gangs in their opinion best qualified to do their work. Subject to the foregoing provisions, gangs and men not assigned to gangs shall be so dispatched as to equalize their work opportunities as nearly as practicable, having regard to their qualifications for the work they are required to do."

The same words appeared in the National Longshoremen's Board award of 1934. Gangs chosen by the employers for continuous work are called steady gangs. Gangs dispatched to varying employers through the hiring hall are called casual gangs.

Sec. 4 of both the longshore agreement and the award states that all men shall be hired and dispatched through the hiring hall, and Sec. 5 says that the dispatcher shall be selected by the union. Through the power thus conferred, the union ceased supplying steady gangs in Portland, Seattle, and Los Angeles in 1935 and in San Francisco in 1939. For six years in San Francisco and for eleven years in the other ports, all longshoremen have been hired through the hiring hall under the supervision of the dispatcher who is presumed to have divided the jobs qualitatively as well as quantitatively, giving to both unattached longshoremen and gangs their share of the desirable tasks without preference for any man, gang, or employer.[13]

The employers argue that familiarity promotes efficiency and sound industrial relations and that the cessation of continuous employment of the same group by the same employer has caused a heavy loss in productive capacity. They also urge that such continuity of employment decreases the burden of dispatching, relieves the need of reporting to the hiring hall, and lessens travel time. They hold the restoration of steady gangs to be the most important of their demands.

Accordingly, the employers propose that Sec. 11 (a) be amended by adding the sentence: "The Union shall supply each Employer with as many steady men and gangs as the Employer needs."

The union does not deny that steady gangs will increase the efficiency of the operation of certain employers and eliminate the hiring problems of certain longshoremen but avers that these very virtues emphasize the countervailing vices of favoritism and inequality of work opportunities—evils that the hiring hall was supposed to eliminate.

The union insists that it is no answer to say, as the employers do, that during specific periods the earnings of casual and steady gangs were approximately equal in San Francisco. Assuming the figures to be typical, they do not begin to spell a true equality between the two classes into which the employers seek to divide the union. Equalization is the fundamental objective of the union, and equalization includes equal requirements of reporting, equal division of the desirable jobs, equal acceptance of unpleasant tasks, equal regularity as well as quantity of employment, and equal sharing of the work when times are bad. The union urges that it has built an industrial democracy with one type of citizen on the foundation of equitable work assignments and that the inevitable effect of the employers' proposal would be to split the union and create disunity and strife.

The roots of the trouble strike deep; for the dispute is an important example of a larger conflict,—the natural opposition of management to the necessarily levelling effects of trade unionism. Clearly, some efficiency is at least temporarily lost with each impairment of the right to select the man for the job, whether through the operation of the closed shop or the principle of seniority or a limitation of the power to discharge or, as here, the division of work opportunities.

To weigh such losses against the ample but imponderable advantages of the democratic objectives and the democratic organization of labor involves a problem for which there may be no determinate solution.

In such a situation the status quo should be respected. Just as the Board would refuse to direct the rotation of jobs in substitution of an existing system of preferred employment, so it will hesitate to destroy the present level method of hiring and restore the steady gangs which disappeared between six and eleven years ago.

The majority recommend that the employers' demand for the restoration of steady gangs be denied.

Organization of Gangs

Standard gangs in San Francisco are made up of both shipmen and dockmen, and they number 16.

Standard gangs in Los Angeles, Seattle, and Portland are made up of shipmen only. They number 10 in Los Angeles and Seattle and 13 in Portland. Portland also has a minimum gang numbering 11. A special operation in Portland appears to be the cause of its larger standard gang, while the inclusion of a gang boss accounts for its 11-man (instead of 10-man) minimum gang.

The number of shipmen required in any usual operation will tend to remain constant. On the other hand, due largely to the increased use of the lift board, the number of dockmen re-

[13] The few steady men (as distinguished from gangs) permitted are so inconsequential that they have been disregarded. Also, though the union permits skilled gangs (as distinguished from steady gangs), skilled gangs have seldom been maintained in competition with the less arduous general longshore work.

quired will vary. The practice in three of the ports therefore allows variation where varation is needed, whereas the practice in San Francisco denies a similar elasticity.

Though the union urges that the San Francisco employer may order smaller gangs for special operations, it appears clear that smaller gangs are often unavailable and that the employer must take a standard gang or none.

More broadly, the union has failed to indicate in what way conditions in San Francisco differ from conditions in the other three ports or in what respect the present practice of eliminating dockmen from gangs in Los Angeles, Seattle, and Portland has proved harmful or unfair.

The employers' demand, however, goes beyond the elimination of dockmen from gangs and proposes that the first sentence of Sec. 11 (a) should read as follows:

"Subject to the control and direction of the Coast Labor Relations Committee, the Labor Relations Committee shall determine the organization of gangs and methods of dispatching; but in so doing, it shall establish for each port such number of ship gangs as shall be required for its needs, each of them to consist of six holdmen, two dockmen, and two sling or frontmen, and other longshoremen shall be dispatched only as ordered."

Clearly, this prescription fails to take into account both the 13-man standard gang in Portland and the practice in San Francisco where a ship gang consists of eleven men and includes a gang boss who "spells off" the hatch tender and the winch driver. True, the employers do not favor the practice and have advanced it as a reason for not granting a skill differential to San Francisco hatch tenders and winch drivers, but, save for the implications of this demand, they have not requested that the gang boss be eliminated, and the record is barren of any evidence addressed to such a proposal. On the contrary, the employers promised the union (Tr., p. 1,243) that they would not seek to reduce the 11-man minimum Portland gang which also includes a gang boss.

In substitution of the employers' demand, the panel recommends that standard gangs should uniformly consist of ship gangs only, that the constitution of ship gangs should follow present port practice, and that all gangs larger than a standard gang and all longshoremen who are not members of regular gangs shall be dispatched only as ordered by the employer. The parties should be directed to clothe this recommendation in appropriate language, including a proper provision for the special condition prevailing in Portland.

The employers further propose that Sec. 11(a) contain the following provision:

"Dispatchers shall not dispatch unnecessary men to any Employer, and each Employer shall have the right to have dispatched to him the number of men ordered and no more."

Though the record is meagre, the employers' demand appears to reflect present practice except that a gang of standard size must be dispatched to a standard job. In San Francisco this has led to the dispatching of unnecessary dockmen, but the preceding recommendation of the panel cures this vice by eliminating dockmen from gangs and by prescribing that unattached men may be dispatched only as ordered by the employers. Since the additional provision is either redundant or, if it be addressed to some other objective, vague and unsupported, the majority recommend that the proposal be denied.

Right to Assign Men

All longshoremen are dispatched to do a specific type of work and need do no other. Unattached men may be laid off separately, but gangs can be dismissed only as a unit.

In their brief, the employers argue that it is impossible to keep all men engaged in the positions for which they are dispatched. While there is no need to transfer them if they are occupied, common sense requires that they be placed where they can work, and they should be subject to assignment by management.

The employers propose that a new subsection shall be added to Sec. 11, reading as follows:

"Each Employer shall have the right to assign the men to the performance of such longshore duties as the Employer shall determine and to shift longshoremen between ship and dock and vice versa and from place to place and from position to position on the dock and on the ship, and no rule shall be adopted or enforced which in any manner interferes with the liberty and freedom of the Employer in this respect."

It will be observed that, though their argument is addressed to the control of idle men, the employers' demand involves the right to shift men for any cause.

To support this important proposal which would deny longshoremen the privilege to select the job they wish—a privilege not unknown to industry generally and accorded to longshoremen over many years—the employers, though silent in their brief, have introduced testimony to show that the old timers choose the easier dock work and that the more arduous and more important hold work often goes to less experienced men. Though the dockmen have registered for dock work and though the holdmen are part of a gang, whose activities will supposedly be confined to ship work at the employers' request, it is suggested that each individual employer shall have the right to shift dockmen to the hold and holdmen to the dock.

The majority do not believe that the record supports this drastic proposal and recommend that the employers' demand be denied.

In respect to prevention of idleness, the employers have the privilege of laying off unattached men when they please. Members of shipgangs cannot be dismissed separately, but the gang operates as a unit, and it is not easy to understand how individual idleness could occur in a balanced production confined to ship work and synchronized by the swing of the winch. In any event, neither the employers' proposal nor the evidence in the record is addressed to the shifting of idle men.

Daily Reporting and Short Gangs

As previously mentioned, longshoremen work or are idle as they please and, after absenting themselves, may return to their hiring hall and receive their share of the work opportunity of the port. In Los Angeles, the estimated work of gangs for the year 1944 was 291 out of 302 working days. In San Francisco, for the period Aug. 6 to Sept. 2, 1944, one man out of three failed to average five days' work a week. Longshoremen work in the neighborhood of ten hours a day.

The employers have stated that the nature of longshore work and the character of the men attracted to it are opposed to regularity of employment. Mr. Foisie, president of the coast association, testified (Tr. p. 885 and 886)

"There isn't a longshoreman in this room who won't assure you that one of the attractive things about this business is that he does not have the same starting hour for work every day. * * * Now let me assure you, sir, that the very irregularity of longshoring, with its leisure spells in between jobs, is one of the most attractive things of this work and one of the reasons in my experience why many longshoremen will not answer to a factory whistle."

Notwithstanding this sympathetic statement, the employers propose to add a new paragraph to Sec. 11(E) reading as follows:

"Every longshoreman not assigned to steady work for an individual employer or not engaged in any job assignment shall be required to report daily (Sundays and holidays excepted) at his port hiring hall at such dispatching period as shall be prescribed by local rules and at such other times[14] as shall be prescribed by local rule, sickness and other justifiable causes excepted."

In addition to the inconsistency alluded to above, the union points out the injustice of demanding daily reporting with no guarantee of work, no reporting fee when work is not available, and nothing provided save a penalty for failure to report. The answer of the employers, similar to the answer noted in the vacation section of this report, is that the high earnings of longshoremen balance this detriment.

To the union's argument that it would be difficult to keep casual men in the industry under a system of daily reporting, the employers give no answer although the fear appears justified. Gangs, too, might be affected if, after 19 10-hour workdays, a penalty were assessed for failing to report on the twentieth day. The evidence shows that old timers who can ill be spared have been leaving the industry, and their departure should not be encouraged by the imposition of an onerous and unusual condition.

Since the employers have themselves demonstrated how unrealistic is the argument based on comparison with other industries, since there is at least grave doubt whether the quantity of longshore labor would, on balance, be increased, and since the proposal as framed fails to provide pay for re-

[14] Though the employers say that reporting once a day will be sufficient, the proposal is not so worded.

porting when work is unavailable, the majority recommend that the employers' demand for daily reporting be denied.

A serious related problem must be considered. On the days when gangs do work, their proper functioning is dependent on the appearance of all gang members. When members fail to appear or supply replacements, the prescribed operation may have to wait for hours until substitutes can be procured from the hiring hall and, in any event, the smooth performance of the work is greatly impaired. The union recognizes the problem and has tried to cope with it. Out of 679 penalties imposed by the union on its members in the port of San Francisco from Apr. 3, 1944, to Oct. 4, 1944, more than two-thirds involved failure to secure a replacement. Most of these transgressions would not have been prevented by the employers' proposal for daily reporting which does not relate to men engaged in a job assignment. The union, however commendable its intentions, has failed to cure a gross abuse which must be eradicated.

Accordingly, the panel recommends that the following subsection should be added to Sec. 11:

"Whenever a gang member fails to report and does not give sufficient notice to the union to permit the union to obtain a replacement, he shall be required to pay a fine of $25.00 to the Port Labor Relations Committee. If the fine is not paid within 30 days from the date of the offense, the Port Labor Relations Committee may strike the name of such gang member from the registration list.

"In the event that the same man shall fail to report or to obtain a replacement as provided above three times in any contract year, loss of registration shall be mandatory.

"The union may request the Port Labor Relations Committee to reconsider action taken pursuant to the above provision on a showing that failure to report or supply a replacement was due to causes entirely beyond the control of the gang member or the union, but reconsideration may be requested only when there is a clear showing that no imputation of blame attaches to the gang member."

Abolition of Maximum Load Limits

The speed with which a loading or discharging operation will be performed is conditioned by the speed of the sling and size of the load that it carries. In order to limit the speed of operations and avoid disputes on the job, the parties agreed in 1937 on certain maximum load limits which are listed in Sec. 11 (h).

The employers desire to abolish maximum sling load limits and propose that loads shall be of such size as the employer shall direct, provided loads are not inimical to health and safety.

The employers contend that load limits have curtailed production. When, for example, the Navy suggested that the size of cement loads be increased from 22 sacks to 30 sacks, a test conducted with the larger load, other conditions remaining constant, resulted in a 68 per cent increase in efficiency. That an increase of one-third in the size of the load increased efficiency two-thirds may require explanation, but that, other things being equal, an increase in the size of the load will increase production is axiomatic.

The employers' comment that, "with this conclusive demonstration of the effect of removing this artifical limit on loads, it is submitted that the employer proposal should be adopted," is therefore less than convincing.

The union points out that it is improbable that present swing load maximums are high, for it is common practice to swing less than the limit, and the agreement says that "the employers will not use the maximum loads * * * to establish unreasonable speedups."

Notwithstanding this inference, the union does not claim that present limits are immutable; on the contrary, it is satisfied to have any item reexamined and judged on the merits.

The union argues, however, that a proper limitation on the size of the load is a wise measure of a fair day's work, which will avoid disputes and prevent either undue speed or shirking. The union's objection is addressed to the substitution of a unilateral for a bilateral determination of the just size of the load.

The majority, believing that the union's position is sound, recommend that the employers' proposal for the abolition of maximum sling load limits be denied and that the parties be directed to renegotiate maximum limits for the items presently listed in Sec. 11 (h).

Discipline

Sec. 110 of the longshore agreement reserves to the employer the right of discharge for specific reasons.

In case of discharge without sufficient cause, the Labor Relations Committee may order payment for lost time or reinstatement or both.

The employers point out that the right is illusory because a longshoreman discharged one day can be and has been redispatched to the same employer the next day. The employers propose that Sec. 11C be amended to provide that a discharged longshoreman shall not be redispatched to any other job until his case shall have been disposed of by the Labor Relations Committee.

Clearly, a discharged longshoreman should not be redispatched to the employer who discharged him unless and until it is decided that he was discharged without sufficient cause. On the other hand, employees do not customarily lose their right to employment in an entire industry merely because they have been discharged for cause by a single employer, and such a result would be the more harsh where the industry, united under a single contract, would have the power accurately to enforce such a regulation.

The panel recommends that the employers' request relating to discharged longshoremen be limited to the prevention of redispatching to the discharging employer and, as so amended, should be granted.

Under Sec. 11(E) the employers also propose specific penalties to be imposed by the Port Labor Relations Committee for serious offenses where guilt has been determined by a finding of the Labor Relations Committee or by a confession or by a conviction in any court. In the case of pilferage, the employers demand cancellation from the registration list; for drunkenness and for smoking in prohibited areas suspension for not less than 30 days is proposed for the first offense and cancellation from the registration list for repeated offenses.

Though the union urges the wisdom of avoiding rigidity of penalty and maintains that discipline is a paramount responsibility of the union, it does not deny that the employers have an interest, and the fixing of minimum penalties for serious offenses is surely not an unusual procedure. A little grading could, however, be provided without impairing the relief to which the employers are entitled.

The majority recommend that the penalties demanded by the employers be amended as follows and, as amended, should be granted: For pilferage, first offense: minimum penalty, six months' suspension—maximum penalty, discretionary; for pilferage, second offense: mandatory cancellaton from registration list; for drunkenness and for smoking in prohibited areas, first offense: suspension for 15 days; second offense: suspension for 30 days; succeeding offenses: minimum penalty, 60 days' suspension—maximum penalty, discretionary.

The count on the number of offenses should begin as of the date of the Board's directive order and should cover the offenses of the particular longshoreman against all employers under the longshore agreement.

Though the employers have also asked a minimum penalty of suspension for 30 days for all violations of the working requirements, they have presented no argument to support this drastic demand, and the majority recommend that it be denied.

Operation of Hiring Hall

Sec. 5 of the longshore agreement provides that the dispatcher shall be selected by the union. The employers propose that the dispatcher shall be selected by the Labor Relations Committee of the Port from the union membership or, upon its failure to agree, by an arbitrator. The employers also propose that both the employers and the union shall be permitted to maintain a representative in each hiring hall.

In support of their position, the employers point out that, though they do not object to a union dispatcher, they, as well as the union, have an interest in the choice of the proper man and in the efficient administration of the hiring hall. As an indication of present inefficiency they draw attention to the great turnover of dispatchers (Exhs. CCC to FFF).

The union admits that the term of the dispatcher should be fixed by agreement and not, as it is now, by the constitution of the local union. The union has put in no answer to employers' request for a representative in the hiring hall. The union maintains, however, that it is essential that the dispatcher enjoy the confidence of the men he dispatches to blind jobs and that the necessary condition of maintaining that confidence is granting the longshoremen a voice in determining the man who will administer this blind dispatch. Admitting the necessity of qualifications and standards,

the union strongly urges the wisdom of permitting the union to elect dispatchers.

The panel, believing that union election of dispatchers should be continued and recognizing the interest of the employers in efficient hiring halls, recommends that Sec. 5 of the longshore agreement be amended to read as follows:

"The personnel for each hiring hall, with the exception of dispatchers, shall be determined and appointed by the Labor Relations Committee of the port. Dispatchers shall be selected by the Union through elections in which all candidates shall qualify according to standards prescribed and measured by the Labor Relations Committee of the Port. If they fail to agree on the appropriate standards or on whether a candidate is qualified under the standards, the dispute shall be decided by the impartial chairman or, at his discretion, by the port agent.

"Dispatchers shall hold office for one year, and neither the constitution nor any rule of the Union or any of its locals shall abridge the right of a dispatcher to hold office for one year or to run to succeed himself as often as he may choose.

"Both the Employers and the Union shall be permitted to maintain a representative in each hiring hall at all times."

Travel Time and Hiring Halls

Travel time is compensation for time spent in traveling. It is regulated by the working rules of the four areas and is allowed in stipulated amounts when the employee travels to and from certain specified ports.[15] In the Seattle and Los Angeles areas, travel time is paid both ways. In the Portland and San Francisco areas, travel time is paid one way.

The union demands that, in those cases where travel time is presently paid, it shall uniformly be paid both ways.

The union also asked that travel time be made a part of the straight-time workday, thus decreasing the number of hours that would actually be worked at straight time, but the union put in no argument respecting this demand, which the panel agrees should be denied.

In support of its principal demand, the union argues that, though the naming of travel-time ports is a local matter, the basis of compensation is a general problem, that the payment of two way travel time is common practice in labor agreements, that in an arbitration award the Pacific Coast Maritime Industry Board granted two way travel time in the Seattle area, and that there is no reason in equity or sense why a man should not be paid for the time he loses when he is dispatched to a distant port.

Though the employers urge that local travel-time rules should be based on local conditions and though they point out that many men receive travel time one way who never travel at all,[16] these arguments would not be persuasive in the absence of an additional factor which must be given detailed consideration.

The necessity for paying travel time springs from the absence of branch hiring halls. Theoretically, travel time could be practically eliminated by opening a branch hiring hall in the vicinity of each terminal. Were the employers to make such a proposal, it would properly be opposed by the union, for redundancy of hiring halls, by limiting the area of dispatching, unequalizes the work opportunities of the port and increases the need of casual men. As Wayne Morse said in an arbitration award dated June 17, 1940, denying the employers a branch hiring hall in Long Beach in the Los Angeles area of California (Exh. 79):

"The central hiring hall dispatching system has proved to be a reasonably effective method for equalizing work opportunities in the various ports on the Pacific Coast. * * * These (Los Angeles) waterfronts constitute a work opportunity unit, and the problem of decasualizing the shipping industry * * * can best be done * * * by the San Pedro central hiring hall."

However, Wayne Morse also said that, though the union has considered the central hiring hall to be its most important safeguard from economic weakening, this is no reason for refusing modification on the merits of a given case. About 200 men were

15 In the Los Angeles area, travel time is paid to and from ports 50 miles or more distant.

16 For example, many men live in the East Bay section of San Francisco harbor. When they are dispatched to an East Bay terminal, they receive one way travel time just as though they lived in the city of San Francisco. Thus, the employers contend, even if it be so that some men receive too little travel time, others receive too much. No similar contention has been made in respect to the other (Portland) area where one way travel time presently prevails.

living in Long Beach, and the requested hiring hall would have provided work for that number. One of the employers' proposals in the instant case is quantitatively so different as to fall into another class.

The employers demand that branch hiring halls be opened at Long Beach near San Pedro and at Crockett and East Bay in the San Francisco area. Practically no testimony was offered regarding the Long Beach and Crockett requests, and these proposals have therefore been disregarded by the panel. Adequate evidence was, however, introduced respecting the proposed hiring hall in the East Bay section of the San Francisco area.

The central hiring hall in the San Francisco area is situated in San Francisco. The work is divided as follows:

In San Francisco, 30 per cent; at East Bay employer ports, 32 per cent; at army transport ports, 38 per cent.

At least half the work is done in East Bay. More than 20 per cent of the men live in East Bay, and, if an East Bay hiring hall were opened, a larger percentage would probably reside there.

If one branch hiring hall were opened in the East Bay section, over 4,000 men would be dispatched through that hall, and approximately the same number would continue to be dispatched through the San Francisco hall. Judging from union local membership figures, a greater number would be dispatched from each of the two halls than from any other West Coast hiring hall and, except for San Pedro, more than twice as many. Portland, with approximately 1,500 longshoremen, and Seattle, with 2,000, both have smoothly functioning hiring halls.

There would appear, therefore, to be little doubt that an East Bay hiring hall would have a sufficient base not to interfere substantially with the work opportunities of the port and to justify the formation of a second casual work pool. In addition, as the employers point out, the problem of dispatching would be simplified, the ability to replace men would be increased, the amount of travel time would be diminished, and the cost of travel time and transportation allowance would be greatly reduced.

Nevertheless the union has opposed the opening of an East Bay hiring hall on the ground that the San Francisco area must be viewed as a single entity within which no disturbance of the equalization of work opportunities may be tolerated. You cannot divide men up and say: "Because your home is there, there you must work." But you must continue to dispatch 8,700 men equitably through a single hall so that each may receive his normal share of the undivided work of the port. Simultaneously, too, the union presses its demand for increased travel-time allowance.

The union's contention does not balance the gravity of the opposing arguments, and the panel recommends that the parties be directed promptly to work out the details of a branch hiring hall in the East Bay area of the San Francisco harbor to the end that such a hall be opened at the earliest practicable date. The details shall include appropriate changes, if any be required, in the travel-time rules of the San Francisco area, growing out of the opening of the branch hiring hall, as distinct from the two way travel-time rules mentioned in the next paragraph.

The panel further recommends that, from the date when the East Bay hiring hall is opened, travel-time shall uniformly be paid both ways in the San Francisco area in all instances where travel time is paid at all.

The reasons that necessitate a delay in the San Francisco area do not apply to the Portland area where no dispute respecting a branch hiring hall exists. The majority therefore recommend that, from the date of the Board's directive order, travel time be uniformly paid both ways in the Portland area in those instances where travel time is presently paid.

There is, however, language in the record (Tr., pp. 850-851) which indicates that in the Portland area men may presently be receiving duplicate travel time when they work on more than one ship. It is not the intention of the majority that men should receive more than two way travel time, and the parties should therefore be directed to agree on language which will eliminate this practice after two way travel time has become effective in the Portland area.

Grievance Procedure

Sec. 9 of the longshore agreement provides for a Coast Labor Relations

Committee and for a Port Labor Relations Committee in each of the four ports. Because of equal representation of management and labor on both the Port Committees and the Coast Committee, action by these committees is dependent on consent.

The longshore agreement also provides for the appointment of a coast arbitrator who shall, at the request of either party, appoint agents in each of the four districts.

Disputes not adjusted by the port committees are referred, at the request of either party, to the coast committee which also has the power to set aside any decision of a port committee.

Disputes not adjusted by the coast committee are referred, at the request of either party, to the coast arbitrator who is authorized conclusively to determine such disputes after a formal hearing. The coast arbitrator may delegate his authority to determine disputes of local significance to his agent. The employers state that the office of arbitrator's agent has been discontinued in all ports.[17]

The union proposes that the coast arbitrator be replaced by an impartial chairman who shall preside over the coast commitee and cast a deciding vote in the event of a tie. The impartial chairman, at the request of either party, will appoint four port agents who will serve as impartial chairmen of the port committees and cast a deciding vote in the event of a tie. The coast committee will hear cases having a coast significance; the port committees would hear the cases having a local significance.

The purpose of the union's proposal is to permit definite rulings by the labor relations committees and provide for the final settlement of minor grievances at the port level.

In support of its proposal, the union argues that the present machinery is both weak and cumbersome. Except by agreement, no dispute, however, trivial, can be settled until it has gone to the port committee, from the port committee to the coast committee, and from the coast committee to the coast arbitrator, who must either hold a formal arbitration hearing himself or designate a port agent to do so. Instead, minor grievances should promptly be settled at the port levels, and broader grievances should normally be decided by the coast committee. Fairness being assumed, speed, definite action, and consistent decisions are the virtures desired, and the greatest of these is speed. Since the port committees could only hear disputes of a local nature, no conflicting orders would issue on matters of coast significance.

The employers rest their case on past bargaining history and past experience. They observe that, following prior practice, the 1938 agreement provided that local disputes should be decided by local arbitration and that, after operating for years in this way, the parties adopted the centralized control provided in the longshore agreement. Now, though the principle of uniformity is urged when it serves the purpose of increasing wages, the union seeks a return to the practice of a port level of arbitration. The employers also point out that most disputes are adjusted by the port committees even though a tie vote might have prevented such a settlement and that very few cases have been decided by the coast arbitrator. The employers urged that the union's proposal will multiply and magnify the differences between the parties.

Contentions based on history and practice can scarcely support the weak and unusal grievance procedure or invalidate the union's argument favoring a reasonable amendment. True, the existing procedure has discouraged arbitration; but grievances are not really cured by making arbitration difficult to obtain, and the law's delay cannot be defended on the specious ground that it lessens litigation. Present practice has not proved so successful or led to such good relations that it should be protected against the hazards of change; on the contrary, the relations of the parties are bad. The employers, though maintaining that the port committees as presently constituted, competently dispose of grievances, also allege that disputes are summarily settled by the "job action" of the union. Be that as it may, the whole record proves that the status quo cannot be defended on pragmatic grounds.

The pith of the union's demand has been stated. The wording of the union's demand is inadequate. It fails to prescribe, as it ought, how a decision should be reached as to whether a dispute has more than local significance. Although it provides that the impartial chairman may act

[17] For this reason the employers demand that reference to the arbitrator's agent be deleted. Since a new grievance procedure is recommended, the majority have disregarded this demand.

as a single arbitrator it fails to say that he may so act when, in his opinion, the circumstances warrant and that in such cases a formal hearing should be held. Instead it says that disputes may be decided by the impartial chairman in the seemingly impossible event that the coast committee fails to agree. It does not propose an adequate method for the selection of the impartial chairman. It does not provide, though it probably should, that discussion of a grievance should precede its consideration by the port committee in order, if possible, to dispose of the matter by consent. In other respects also the union's proposal is ambiguous or inadequate. The record is silent regarding these important details because only the broader aspects of the union's proposal were discussed.

The majority recommend that the principle of the union's demand respecting the grievance procedure be adopted and that the parties be instructed to work out the details and clothe the proposal in appropriate language.

Arbitration Under the Board's Order

The panel recommends that the Board retain jurisdiction of the case and appoint an arbitrator if the parties fail to reach an agreement in respect to any point which they have been directed to work out by negotiation.

Government Statistics Respecting Efficiency

In the efficiency section of this report, reference was made to statistics supplied by the Navy, the Army, and the War Shipping Administration (WSA), at the request of the panel. All three agencies drew attention to the fact that their figures should be used with caution. Originally all three agencies requested that their material be held confidential. However, the Army and the WSA later withdrew this request, and a brief analysis of the figures supplied by these agencies follows. All statistics, except when otherwise mentioned, are based on the gang used for loading cargo from "end of ship's tackle" because such gangs are fairly constant in size within the same port and the process follows a relatively regular pattern.

Army Statistics

The Army statistics cover the first quarter of the year 1945.

The Army had at first supplied figures covering the year 1944. Because the 1945 figures are more accurate than the 1944 figures, the Army has asked that the 1945 figures be used in lieu of the 1944 figures.

The average weight tons moved per man-hour[18] were 1.07 tons on the Atlantic Coast and 1.08 tons on the Pacific Coast.

The average cost per weight ton was $1.14 on the Atlantic Coast and $1.17 on the Pacific Coast.

Average weight tons moved per man-hour on the Atlantic Coast varied from 1.02 tons in Boston to 1.47 tons in Baltimore; average weight tons moved per man-hour on the Pacific Coast varied from 1.03 tons in Los Angeles to 1.14 tons in Seattle.

Average cost per weight ton on the Atlantic Coast varied from $.69 in Charleston to $1.24 in Boston; average cost per weight ton on the Pacific Coast varied from $1.10 in Seattle to $1.23 in Los Angeles.

The marked divergencies between the various cities within the same region are precisely what might be expected from the Army's caveat which reads as follows:

"Many of the controlling factors such as seasonal changes, types of pier facilities, method of operation according to local established practices, availability of experienced labor, type and stowage factor of cargo, etc., reflect in the overall production but cannot be individually measured. *It is therefore impossible to actually arrive at a true comparison.*" (Italics supplied)

War Shipping Administration Statistics

The statistics of the WSA cover the second half of the year 1944.

Though neither the Army nor the WSA show costs or tonnage moved according to type of cargo, the WSA does show the average variations within each port of tons moved per gang-hour by a full (not ship's tackle) gang, according to the trade area served by the cargo. In the table that

18 Weight tons moved per man-hour and cost of moving a weight ton are the only relevant figures. Gang hours are completely misleading, for a New York gang of 16 men will obviously move more cargo in a given time than a San Francisco gang of 12 men. Indeed, it was because the Army had underestimated the size of certain East Coast gangs that the Army requested that its 1944 figures should not be used.

follows these variations have been reduced to man-hours.

Weight Tons Moved per Man-Hour

Location of Port	Tons Moved per Man-Hour	Variation
	Varies from	
New York	.54 to .70	30%
Philadelphia	.61 to .75	20%
Baltimore	.65 to .99	52%
San Francisco	.58 to .79	36%
Los Angeles	.43 to .95	116%
Puget Sound	.91 to 1.21	33%

It will readily be seen that variation as to this one factor will distort comparisons between areas and will even more probably distort supposed comparisons between cities.

The six cities listed in the preceding schedule are the only East Coast and West Coast cities mentioned by both agencies where the WSA showed over ten loadings. A comparison of the figures supplied by the two agencies respecting tons moved and cost per ton is not without interest.

Location of Port	Weight Tons per Man-Hour		Cost Per Ton	
	Army	WSA	Army	WSA
Atlantic Coast	1.07	1.08	$1.14	$1.17
Pacific Coast	1.08	1.02	1.17	1.25
New York	1.04	1.04	1.20	1.22
Philadelphia	1.05	1.13	1.19	1.12
Baltimore	1.47	1.22	.86	1.05
San Francisco	1.08	1.03	1.14	1.22
Los Angeles	1.03	1.04	1.23	1.20
Seattle (Puget Sound)	1.14	1.01	1.10	1.24

The Los Angeles figures of the WSA are based on only 14 loadings, the Puget Sound figures on only 48 loadings. Both are therefore subject to more than usual doubt, and the same doubt naturally follows as to the Pacific Coast average.

On the other hand, the New York base (544 loadings) of the WSA figures is ample, and the Philadelphia, Baltimore, and San Francisco bases (84, 75, and 61 loadings respectively) are not entirely inadequate.

It will be observed that the statistics indicate no important difference between the East Coast and the West Coast and that this is particularly true of the probably more accurate army figures.

New York and San Francisco are the two most active ports on their respective coasts. Whether judged by army weight tons moved per man-hour or cost per ton, San Francisco appears to be from four per cent to five per cent more "efficient" than New York. The chairman has already indicated his reasons for questioning the validity of such comparisons. He draws no deductions from these apparent differentials, just as he would have drawn no inference from the less accurate 1944 army statistics which appeared to show that San Francisco was 16 per cent less "efficient" than New York.

The point is stressed for a particular reason. During the period that the panel was considering the case, a few days after the Army granted the panel permission to quote its statistics and prior to the release of the 1945 figures, a portion of the inaccurate 1944 figures relating to the supposed comparison between New York and San Francisco appeared in a San Francisco newspaper. Standing alone, without mention of the Army's explicit caveat, untrammeled by the important reservations which should have been made, and unaccompanied by the statement that the Army's overall 1944 statistics showed no efficiency differential between the two coasts, these selected figures gave a distorted picture, unfair to the union and, what is more important, calculated to further impair the already strained relations of the parties. A half truth is ever the most mischievous of untruths and, in the interests of the employers as well as the union, the chairman points out the infirmity of an unfortunate inference.

No satisfactory measure of comparison emerges from the figures supplied to the panel. To the extent that these statistics may be said faintly to suggest anything, they indicate that there is no marked difference in longshore efficiency between the East Coast and the West Coast.

Signed by Arthur S. Meyer, representing the public; Arthur E. Phillips, representing labor, subject to dissent as indicated in dissenting opinion; and Lee G. Paul, representing employers, subject to dissent as indicated in dissenting opinion.

Dissenting Opinion of Labor Representative

May 25, 1945

This case has been difficult and complex. It has been exhaustively

argued, thoroughly briefed, and considered over a period of many months by the panel. Consequently, I am not disposed to dissent on all decisions with which I am not in agreement. I have therefore reserved my dissents for those issues in which, in my opinion, the panel has reached an entirely unreasonable conclusion. On the remainder—those issues which I would have decided differently but which have some reasonable basis in fact or in policy—I shall comment without entering formal dissent.

There are two issues in the decision upon which I feel that the panel majority has erred and erred seriously. These are the issues of straight-time wage rates and skill differentials for hatch tenders, lift jitney drivers, and gang bosses.

WAGES

The union asked for a straight-time wage rate of $1.25 per hour for longshoremen or an increase of 15 cents per hour over the present straight-time rate of pay. It asked that five cents of this amount be awarded to correct maladjustments and [stated] that the remaining ten cents was required to cure a gross inequity between the rate of pay under the Pacific Coast agreement and that which has prevailed for two years under the North Atlantic agreement.

The decision of the majority of the panel to limit the increase to five cents per hour on the base rate and to deny the request of the union for the same base rate of pay as that prevailing in the North Atlantic accords neither with equity nor with national wage policy.

As the chairman's report makes clear, both parties in the dispute agreed that the wages paid to longshoremen in the North Atlantic ports and the wages paid to longshoremen in the Pacific ports should be the same. The panel accepted this agreement as the principle of its own decision. The parties disagreed as to what constituted wage parity, and in resolving this disagreement the majority of the panel has upheld the employers' position. The union contended, and correctly in my view, that the National War Labor Board has consistently and explicitly determined the extent of inequities by comparing straight-time wage rates and that it has taken little if any account of take-home earnings or overtime provisions in determining whether an inequity did or did not exist. There is no dispute, nor can there be, as to the facts. The North Atlantic rate is $1.25 per hour; and the Pacific Coast rate is $1.10 per hour. The parties have agreed and the panel agreed that there should be parity between the two rate structures.

In 1934, pursuant to an award of a presidential board of arbitration, a limited six-hour day was established in West Coast ports. No like provision has been introduced into East Coast ports.

The consequence of this decision was that, within an eight-hour work period from 8 a.m. to 5 p.m., if it were worked in its entirety, West Coast longshoremen would receive two hours' pay at overtime rates; East Coast longshoremen would have their pay at straight-time rates for this eight-hour work period. It was the contention of the union that to give any weight to the six-hour day was to violate the clearly expressed policy of the National Board and to unfairly penalize the union in its present wage dispute for a provision of contract which was without relevance to the question under dispute—the proper rate of pay. In this position, I believe the union was entirely correct, and the panel majority in making its wage award has departed unwarrantedly from the policies which are supposed to guide the settlement of wage disputes.

The union offered an alternative position. It presented a comparison of North Atlantic rates and West Coast rates on a round-the-clock basis. It demonstrated that, even if the panel departed from a comparison of wage rates and gave weight to the so-called 6-hour day, a wage increase of 10 cents per hour (a rate of $1.20 per hour) was required to bring about the parity between North Atlantic and West Coast rates. The union demonstrated that the 6-hour day did not apply during nightime hours and that the rate of pay for hours between 5 p.m. and 8 a.m. was $1.87½ per hour in North Atlantic ports and $1.65 per hour in West Coast ports and that, if the purpose of the panel award was to bring about parity between the two rate structures, this could be brought about only by comparing the entire 24-hour period and not by limiting comparisons to an artificial 8- or 10-hour period.

There is no escape from the logic of this position, and to argue as the panel majority has argued—that in normal times on the West Coast and at present upon the East Coast the eight-hour daytime shift is the prevailing shift—

is irrelevant. Either comparisons are properly made on the basis of rates of pay or they are not. I find nothing in any reading of War Labor Board policy to indicate that they are not, and the panel has been offered an alternative by the union of considering either straight-time rates of pay or daytime and nighttime rates of pay as the basis for its determination of the wage equities in the case. To reject both of these and to adopt in its place a virtually indescribable composite of rates and earnings modified by what the panel believes the normal shift will be at some future date seems to me utterly without justification and without an intelligible basis.

The chairman's report will show that I agreed to allow some weight to the six-hour day feature of the West Coast contract. In agreeing to consider the six-hour day as a factor in the wage structure, I did so only as an expression of support of the union's second position—that is, a round-the-clock comparison of day and night rates. In believing that we might achieve an equitable solution of the wage dispute by providing a rate of pay which applied to all hours of the day and night and would yield parity between the two coasts, I intended in no wise to agree that a comparison based on an illogical miscellany of rates and earnings could possibly yield an equitable result.

The chairman's opinion declares that any increase beyond the five cents per hour granted must be denied as contrary to national wage stabilization policy and likely to disturb the proper balance between East Coast and West Coast wage rates. It is my firm conviction that an increase of ten cents per hour must be granted because to deny it would be contrary to national wage stabilization policy and because it fails to restore the proper and historic balance between East Coast and West Coast wage rates.

It is for these reasons that I dissent and here reiterate the position I took before the panel that an increase of 15 cents per hour on the base rate of West Coast longshoremen is proper under wage stabilization policy and that anything less than 10 cents per hould would be clearly inequitable.

SKILL DIFFERENTIAL

The union asked that differentials in effect in certain ports on the Pacific Coast should be extended to the balance of the Pacific Coast ports. These differentials are presently paid to gang bosses, winch drivers, hatch tenders, and lift jitney drivers. The panel majority has recommended this extension in the instance of winch drivers and denied it for hatch tenders, lift jitney drivers, and gang bosses.

The position of gang boss exists in two of the four major areas on the Pacific Coast (Portland and San Francisco). In Portland, the gang boss receives a premium of 15 cents per hour; in San Francisco, a premium of ten cents per hour. The differential requested was certainly not an unreasonable one. It has prevailed for many years in the port of Portland and would certainly be shown to be a modest differential as compared with premiums for minor supervisory personnel in industry generally. There was here an opportunity to bring about uniformity within a contract which has as its basic function and purpose the establishment of uniformity by complying with this moderate request. Not to have done so is in my view an error.

A more serious error has occurred in the liberties that the majority of the panel have taken with firmly grounded practice by denying any differential to hatch tenders. Under port practice in every port on the Pacific Coast, the hatch tender and the winch driver alternate on their jobs. A winch driver alternates hour for hour driving winch and tending hatch. The qualifications for a hatch tender require as a matter of invariable practice that he be able to drive winch. The entire safety of the gang as well as the safety of the cargo is in the hatch tender's hands, and it is upon his signals that the winch driver depends for the speed, efficiency, and safety of his operation. It is the hatch tender who must judge and communicate by signal when the cargo is to be lowered into the hold and when it is to be held. It is the hatch tender who must judge the progress of the load. The winch driver often drives "blind." He cannot see the hatch to which he is delivering cargo. It is almost literally true that the hatch tender is the eyes of the winch driver and is a vital and completely necessary factor in the efficiency with which the winches operate. To deny a skill differential to the hatch tender in San Francisco which he enjoys in Portland, Seattle, and Los Angeles, particularly when the hatch tender and winch driver is one and the same person and requires both skills

to hold either job, is to achieve an irrational and arbitrary result.

Lift jitney drivers operate expensive and valuable machines—machines which greatly increase the efficiency of the longshore operation. It has become a very general practice not only in the longshore industry, but in the allied warehouse industry as well, to pay a premium of ten cents per hour over the base rate to lift jitney drivers. The premium is paid to Portland and Seattle longshoremen and widely throughout the warehouse industry on the Pacific Coast. It has become so widely established at the present time that to deny its extension to the Pacific Coast ports is simply to insist on maintaining local inequities within the coastwise contract.

It is particularly unfortunate that this differential should have been denied since the lift jitney is the forerunner of many technological improvements which are in prospect for the industry and which promise both to promote efficiency and save labor on the waterfront. It is the hope of every responsible union that its members will receive a reasonable share of the savings created through the introduction of labor-saving, machinery. To deny the extension of an already well established premium for lift jitney drivers is to indicate that, in the view of this panel at least, labor is entitled to no share in the improved efficiency in the industry in which it operates.

GENERAL COMMENT

In addition to the foregoing dissents, there are certain comments which I should like to make, bearing either upon ambiguities in the majority decision or upon points of disagreement with the panel majority of insufficient intrinsic importance to require a dissent.

Coverage of Contract

The first issue presented in the case was the issue of coverage of the contract. The union asked that carloaders and unloaders be recognized as longshoremen and covered by the terms of the longshore agreement. It demonstrated conclusively that the work was indistinguishable so far as job content was concerned from the work of longshoremen and, furthermore, that the distinction, whatever meaning it may have had in 1934, was today artificial and unreal. On technical grounds, this request was not allowed since it was held that the coverage of the contract was within the jurisdiction of the National Labor Relations Board and not of the National War Labor Board. It may be that this decision was technically correct, and for this reason I have not dissented. Nevertheless, the result is a clearly inequitable one. The panel heard a good deal of evidence on the point and, rather than holding the issue to be moot as it has in effect done, it might well have let the parties have the benefit of its judgment on the evidence no matter what the limitations on its power of decision might be. In my view, the case was a clear one of identical work performed by members of the same union for the same employers. I believe that the majority of the panel should have found likewise even though the issue was not within its power to decide.

Penalty Rate

The majority of the panel recognized the equity of the union's request for a change in the penalty rate presently paid for handling explosives. It found against the union on the extension of the definition of the explosives hazard. It seems hardly reasonable to hold, upon the one hand, that exposure to hazards of loading explosives is entitled to a larger compensation and then, on the other hand, to hold that stowing cargo into a hatch containing explosives is not equally hazardous. Ammunition is quite as likely to explode if heavy cargo is dropped upon it as if it is dropped upon cargo. The distinction which the majority of the panel insists upon retaining quite disregards the nature of explosives and influences to which explosives are responsive.

Sick Leave

I did not dissent on the issue of sick leave because there is every indication that the National War Labor Board will not yet retreat from its arbitrary position on sick leave. However, I do not wish this absence of dissent to be interpreted as meaning that I believe an equitable disposition has been made of this issue. Exposure, fatigue, and danger are present in this industry to an extraordinarily great degree. For the industry to fail to assume some degree of responsibility for the special hazards to which it exposes its employees and to be supported in that position by the National War Labor Board is not an equitable disposition of the matter.

Signed by Arthur E. Phillips, representing labor.

Dissenting Opinion of Employer Representative

June 2, 1945

PRELIMINARY

The findings and recommendations of the panel in this case affect not only the entire longshore industry of the Pacific Coast involving more than 15,000 employees but also must necessarily affect the longshore industry throughout the rest of the country, particularly on the Atlantic Coast.* This Board, therefore, in reviewing your panel's decision, must be concerned with wage stabilization in the longshore industry not alone in the numerous ports of the Pacific Coast but in the ports of the Gulf and Atlantic Coast as well. The importance of the decision in terms of effect upon the successful prosecution of the war requires no elaboration when the nature of the work performed by this industry is considered. Pacific Coast shipping is harnessed almost completely in servicing the war effort and is under the direct control of the Army, the Navy, and the War Shipping Administration.

As the chairman of the panel has pointed out in his opinion, this case involves principals on both sides who are experienced in collective bargaining. They are also firm in their objectives. I believe it may be said that each of us on this panel has been aware of the necessity for rendering a decision in this case which would eliminate, so far as properly possible, causes of friction between the parties and perhaps furnish a better basis for continuing their relationship in the future. It is the conviction of the undersigned that, however well intentioned are the findings and recommendations of the majority, they will not achieve this result. In addition, this member of the panel believes that, in the particulars noted below, the majority recommendation should be either reversed or modified.

The fundamental issue in dispute between the Waterfront Employers Association of the Pacific Coast (hereinafter referred to as the Employers Association) and the International Longshoremen's and Warehousemen's Union (hereinafter referred to as the union) is of long standing and involves a charge repeated by the employers over many years that the efficiency of longshoremen on the Pacific Coast has steadily declined with a consequent increase in production costs. (Tr., Vol. VIII, p. 1,010) The employers association further charges, and the undersigned believes the evidence in the case substantiates the accusation, that the decline in efficiency is largely due to restrictive practices introduced by the union and imposed on the members of the employers association through "job action" and other illegal practices, violative of both the spirit and the letter of the several collective bargaining agreements that have existed between the parties over almost ten years. All of the employers' affirmative demands in this case have as their objective the diminution or correction of existing practices which adversely affect efficient production. The union, on the other hand, while refusing to meet any of the employers' basic demands, although conceding that certain of them would improve the efficiency of longshore operations (Tr., Vol. IX, p. 1,059; Vol. X, p. 1,192), nevertheless insists that its members are entitled to a very substantial increase in the basic wage rate, vacations with pay, and various other money demands which would add greatly to the production costs of the employers who are members of the association, which costs, of course, are, for the duration of the war, borne by the governmental agencies and hence by the public. The panel's majority has granted the union a five-cent an hour increase in the basic wage rate, granted a substantial number of the union's miscellaneous money demands, and ordered the members of the Employers Association to provide the union with a vacation fund for annual distribution to qualified union members.

While the panel has also recommended to this Board that certain of the employers' demands be granted either in whole or in part, the majority has refused to recommend that the Employers Association be given the

* The parties have stipulated that wage changes for longshoremen on one coast have always resulted in demands for wage increases by the longshoremen on the other coast (Tr., Vol. IX, pp. 1,050-1,051). In addition, the Employers Association insists that the wage structure for this entire industry, Pacific, Atlantic, and Gulf, is carefully integrated (Tr., Vol. X, pp. 1,309-1,310).

relief to which the employers are entitled on the basis of the evidence in this case.

The undersigned is not suggesting that the demands of the parties to a dispute case should be weighed on opposite sides of a balance scale. This panel has the affirmative duty to decide each issue in this case on its own merits in the light of the national wage stabilization program and the provisions of the War Labor Disputes Act [9 War Lab. Rep. VII; WCDS 5]. Where the demands of the parties were not clearly interdependent, the writer tried to cast his vote in the panel's deliberations as he believed the individual issue should be decided. In no case, however, with which I have been familiar after more than two years of service on an agency of the Board, have the basic affirmative demands on the one side been so inextricably bound in with the basic affirmative demands of the other.

This is not the conventional dispute case that frequently comes before this Board involving union security, standard working conditions, and familiar wage demands. The union here enjoys, and has enjoyed for many years, power, strength, and security to a degree that is generally unknown by the other unions affiliated with the CIO or by AFL trade unions. Working conditions and wage rates were long since established in this industry on the Pacific Coast that have been and now are not only well above community levels (Tr., Vol. I, pp. 74-79; Vol. V, p. 471) but, in the overall, surpass the wages and working conditions of longshoremen anywhere else in the country. (Tr., Vol. V, p. 471; Vol. VI, p. 775) The Employers Association made clear to the panel that the employers were glad to acknowledge the legitimate gains the union had achieved for its members and pointed to the employers' contributions to decasualizing the employment of longshoremen in this industry on the Pacific Coast. (Tr., Vol. V, p. 498 et seq.) The Employers Association also made it clear to the panel, however, through numerous witnesses and a large number of exhibits, that the return to the employers for high wages and improved working conditions was and has been measured by steadily declining efficiency in longshore operations and steadily increasing production costs. This was no smokescreen thrown up by the Employers Association to obscure the basis for any of the union's demands. The employers have furnished this panel with facts and figures to substantiate their charge that, despite technological improvements in equipment used in longshore operations, efficiency has continued to decline.

The undersigned believes that an objective study of the record in this case will disclose that little improvement can take place until certain practices followed and restrictions imposed by the union are either radically changed or in some cases entirely eliminated. The panel majority, however, approaches the job of affirmative recommendations on the demands of the Employers Association with humility and restraint. No such modesty and forbearance controls, however, in our action on the union's requests. The undersigned has no quarrel with the exercise of restraint by the panel in this case. We are dealing with an industry with which all members of the panel were largely unfamiliar at the time of our assignment. The longshore operation is strange to us, and we have had little opportunity to familiarize ourselves with its vernacular, to say nothing of its technical complexities. The work of cargo handling is full of constantly varying conditions dependent largely upon time, tides, weather, ships, and cargoes.

When these complexities are added to the long collective bargaining history that the parties have developed over many years, the major arbitration awards that have been rendered, and the existence of working and dispatching rules in the several ports on West Coast, there is every reason why the panel should be hesitant to recommend radical changes on either side during wartime.

This is particularly true in this case, where, despite such imperfections as may exist in the present agreement between the parties, a high degree of stability has been achieved. A demand for an across-the-board wage increase under recognized policies of the Board is one thing. Demands for radical innovations or changes are something quite different, particularly when neither your panel nor this Board can anticipate with any certainty the effect upon the relations between the parties or upon the production of an industry vital to the successful prosecution of the war in the Pacific. If changes are to be made, however, there should be no greater reluctance to make them on one side than on the other. This is particularly true in the case of the union's demand

for a payroll tax on all employer members of the Employers Association in order to provide a vacation fund for the union's members and the employers' demands for restoration of steady men and gangs.

ISSUES

Vacations for Longshoremen, Restoration of Steady Men and Gangs

The panel majority has recommended that a payroll tax of 2½ cents be imposed on each employer member of the association for every hour worked for him by a longshoreman. The fund so accumulated by the employer is to be turned over to the union monthly for administration and disbursement prorata to its members who qualify for an annual vacation. The majority has refused, nevertheless, to recommend that the employer members of the association have restored to them the right to hire the same longshoremen regularly on a steady basis. This is reaching out far indeed to find a novel basis for granting vacation rights to this union and its members while rejecting a conventional request of the employer, standard in American industry, for steady men and gangs.

In May of 1934, this union declared a strike on the Pacific Coast which ended only when the parties agreed to submit all issues to arbitration before a Board appointed by the President of the United States and known as the National Longshoremen's Board. The awards rendered by this Board on Oct. 12, 1934, established several innovations in this industry, including a six-hour day, the Pacific Coast as the bargaining unit under a master contract for the industry, and a new grievance procedure. No change was ordered, however, in the existing practice, universal in industry, under which men and gangs of men were in the regular employ of individual employers. The Board gave control of dispatching halls, which had existed in all but one port, to the union by permitting the union to select the dispatcher. The union promptly utilized their dispatchers to destroy the so-called steady men and gangs by refusing to dispatch such men to their previous employers. These charges of the employer are history and are not denied by the union.

Through the above means, the regular employees or steady gangs were eliminated in the ports of Seattle, Portland, and Los Angeles in 1935 but did not disappear in San Francisco until 1939. Since that time, no employer of longshoremen on the Pacific Coast has been permitted to employ the same longshoremen.

The employers introduced substantial evidence to show the adverse effects on efficiency that followed the elimination of regular and steady employees. (See Exhibits II and JJ.) It seems self-evident, as the employers and their witnesses pointed out to the panel, that casual, as distinguished from regular, employees cannot be familiar with management personnel and management methods or the physical characteristics and peculiarities of cargoes customarily handled by individual companies. The union itself acknowledged that steady gangs and men would improve efficiency. (Tr., Vol. X, p. 1,192)

All that these employers have requested in asking the panel to recommend in favor of the restoration of the regular or steady gang is the resumption of a practice universally observed by the longshore industry off the Pacific Coast, by American industry generally, and actually called for under the existing contract between the parties. *

The union, while conceding, as indicated above, that efficiency would be improved through the regular employee or steady gang, objected primarily to restoration because it would interfere with the union's project to decasualize or spread the work in this industry and, further, that it would increase the difficulty of equalizing earnings of longshoremen. The uncontested facts in the record disprove this. In addition, the union claims that restoration of steady men would interfere during wartime with the allocation of men by the procurement agencies of the government. This is likewise untrue.

The majority, in recommending the imposition of a vacation tax on the members of the Employers Association while refusing to recommend the restoration of the normal employer-employee relationship in this industry, has compounded injustice.

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* Sec. 11-A of the present agreement provides in part: "* * * The Employers shall have the right to have dispatched to them, when available, the gangs in their opinion best qualified to do their work. Subject to the foregoing provisions, gangs and men not assigned to gangs shall be so dispatched as to equalize their working opportunities as nearly as practicable, having regard to their qualifications for the work they are required to do."

The vacation plan recommended by the majority would provide a tax of 2½ cents an hour for every hour worked for an employer by an employee under the contract. All employees who, during a contract year, work 1,500 total hours, either for an employer under the contract or for other employers of longshoremen, including government agencies, are to receive one week's vacation with pay. The vacation fund is to be administered by the union, which would be required to render a detailed annual report to the employers association and keep proper books and records. The cost of administering the vacation fund is to be paid out of the vacation fund, and the balance dispersed to the beneficiaries pro rata according to the number of total hours worked by each.

Board policy on vacations for production workers is well known. Such vacations are ordered not as a wage increase but as a period of rest to be provided by an employer for an employee after a year of service in order that the employee may return refreshed. As was stated in the case of Bower Roller Bearing Company, 9 War Lab. Rep. 23, at p. 27:

"The basic objective (of a vacation) is to provide for an actual vacation and for pay to the worker while on his vacation with a view to increasing his efficiency and improving his well-being. * * * The desirable condition is to have every worker take a vacation and return to his work rested and refreshed without suffering a financial penalty or loss."

Additional awards on paid vacations have been granted by the Board on the basis of industry practice (Federal Shipbuilding and Dry Dock Company, 11 War Lab. Rep. 226)

None of the recognized reasons for ordering vacations obtained in this case for the following reasons:

(1) As has been pointed out above, no steady employer-employee relationship exists in this industry on the Pacific Coast; the union has made all such relationships casual. What is recommended by the majority in this case is not that an employer shall compensate his employees with a vacation privilege and vacation pay but that he shall pay a tax to the International Longshoremen's and Warehousemen's Union to be distributed not to his own employees for their services to him but to the employees of other employers in the same or other localities.

One of the most objectionable elements of the recommended tax is that it is predicated upon the operations of employers whose employees will not and never can receive any portion of it. It will be predicated upon the hours of work by longshoremen who can never share in the fund established by the tax. In those areas where the volume of longshoreman work is relatively small in amount and casual in character, the tax will be contributed for distribution in the larger harbors and ports where the earnings of the men are highest and, hence, the money less needed.

(2) The work records of the vast majority of longshoremen on the Pacific Coast show that, since 1934, the longshoremen have enjoyed vacations which were designed for this industry by the union. The Employers Association, at the hearing before the panel and in their printed statement filed at the conclusion of the panel hearings, assert that the longshoremen now enjoy what is referred to as "planned leisure." This is no fancy phrase calculated to misrepresent forced idle time of men who have been laid off by an employer as a vacation. The evidence introduced on this point by the employers' association established conclusively, in the opinion of the undersigned, that these longshoremen received their relatively high wage rates, far above the community level, because of the casual nature of this work. The evidence further shows that longshoremen on the Pacific Coast work when and as they please and, nevertheless, have a legal and vested right to return to the waterfront when they choose and receive their share of work opportunities through the dispatching hall. At the present time, during which there is a scarcity of longshoremen as well as other labor on the Pacific Coast, the evidence in this case, nevertheless, discloses that, with an opportunity provided all available men to work full time, approximately 30 per cent of the longshoremen work on the average only between 1 to 19 days for 4-week periods in San Francisco. (Employers' Exh. "T-T"). In the Portland area, the evidence shows that the average longshoreman has elected to enjoy 111 days of leisure in the year. (Exh. "U-U")

(3) The majority recommendation constitutes a violation of the established policies of this Board. There is no vacation practice in this in-

dustry anywhere in the United States. Your Board, in determining the propriety of ordering vacations, has always been influenced by industry practice, as is pointed out in the federal case cited above. This policy would appear to be reaffirmed by the supplemental directive of the Economic Stabilization Director dated Apr. 24, 1945 123 War Lab. Rep., No. 4 p. VI]. No vacations are given in this industry, either on the Pacific Coast or elsewhere throughout the United States. This is true even though in the Atlantic and Gulf ports the steady gang is recognized and the conventional relationship of employer-employee exists between longshoremen and their regular employers. It is clear, therefore, that ordering a formalized, paid vacation plan for longshoremen on the Pacific Coast would necessarily "be unstabilizing to the * * * industry" through the creation of an industry inequity that would undoubtedly result in demands for sucn vacations from longshoremen in the other ports of the country.

The majority recommendation constitutes a violation of National War Labor Board policy in another particular. Disregard of the absence of the traditional and normal relationship of employer-employee in this industry and the attempt to substitute for the normal principle of vacations, one based upon the false assumption that a group of employers associated for collective bargaining constitute an entity upon which a vacation tax may be imposed, is a violation of Board policy. The Employers Association in this case is merely the bargaining agent for some hundred individual employers in separate businesses spread over 24 ports and of different companies in different ports. The business enterprises involved are separate and distinct and with separate and distince obligations in respect to wages, hours, and conditions of employment of their respective employees.

Yet the majority of this panel seeks to compel those employers, as a group, to provide a character of vacation plan or wage which, as far as the undersigned has been able to ascertain, has never been imposed upon any other industry. The recommendation by the majority that a tax be imposed upon every member of the Employers Association would appear to violate the power of the Board to include in the collective bargaining agreements only "the wages and hours and other terms and conditions customarily included in collective bargaining agreements." (War Labor Disputes Act, Sec. 7 [10 War Lab. Rep. XXI; WCDS 301]). There is no precedent for a tax such as this panel recommends unless it be found in the royalty penalty imposed by the American Federation of Musicians on the recording industry. Such a tax is certainly not one "customarily" included in collective bargaining agreements. Such a tax is wholly inequitable and unsound in that it is not only imposed to be distributed among employees with whom the employer has no relationship but, if you please, is imposed to be distributed among workers, a number of whom may never work for a single employer in this case. The tax is to be distributed among those employees in the union who perform more than 1,500 hours of longshore work even if it be performed exclusively for nonmembers, particularly the U. S. Army. In other words, the tax recommended is to be distributed as a gratuity. No Act of Congress or of the legislature imposing such a tax could be upheld in any court. In addition, the undersigned believes, as pointed out previously, that, where these longshoremen now receive relatively high wages, far above community level in part, at least, because of the casual nature of the work, the award of a vacation will necessarily lead to true absenteeism. Planned leisure under the new vacation proposal will not differ in the future from the past, and the net result, therefore, will be an increase in the earnings of the longshoremen at the expense of the employers, with no change in respect to leisure time or otherwise.

(4) In the opinion of the undersigned, a consideration of the equities in this case requires that, so long as certain existing practices imposed by this union on the Employers Association are retained, the Board should not order paid vacations. As has been pointed out previously, the refusal of this union to restore the steady gang on the Pacific Coast and thereby reestablish the normal employer-employee relationship places the union in demanding a paid vacation, in the position "of having its cake and eating it too." The employers in this case are not opposed to the vacation principle. They follow the vacation policy of the National War Labor Board with respect to those groups of employees who are regularly in their respective

employ. It is clearly inequitable under such circumstances to require the employers to tax themselves to provide vacations for certain longshoremen in the absence of any of the normal relationships that obtain between employer and employee.

Wage Increase for Longshoremen and Retention of Six-Hour Day

The union has demanded a wage increase in the basic hourly rate on two theories. First, it is claimed that 5 cents is owing under the Little Steel formula and, second, that, on the basis of a comparison between the wage rates for longshoremen on the Atlantic Coast ($1.25) and on the Pacific Coast ($1.10), an inequity exists which entitles Pacific Coast longshoremen to a wage increase of 15 cents per hour. The Employers Association insists that nothing is owing to the Pacific Coast longshoremen under the Little Steel formula, that the wage rates between Atlantic and Pacific Coast longshoremen are now in balance, and that a wage increase for West Coast longshoremen would cause, rather than cure, an inequity. The employers further request that the panel restore to employers of West Coast longshoremen the traditional eight-hour day of industry generally, thereby abolishing the present six-hour day, which was inaugurated by the National Longshoremen's Board as a social experiment in 1934. In return for a restoration of the 8-hour day, the Employers Association agrees to accept the Atlantic Coast wage rate of $1.25 per hour for longshore work.

As noted in the majority opinion, the Pacific Coast longshoremen now receive $1.10 per hour for the six hours between 8 a. m. and 3 p. m. Thereafter, time and one-half is paid for such work as overtime. When the six-hour day was inaugurated in 1934 by the National Longshoremen's Board, it was adopted during a period of national depression in order to spread employment among the longshoremen and was given in return for the union's promise that men would be relieved after the completion of six hours of straight-time work. The union, however, from the outset refused to substitute new men at the expiration of six hours and thereby secured two hours of overtime for work previously performed at straight-time rates. The Employers Association claims, and the record substantiates the charge, that a wage increase was thereby obtained. In February of 1937, the employers bowed to ugly reality and acknowledged the six-hour day as such by permitting the same to be included in the labor contract with the union. (Exh. H)

Except on the Pacific Coast, the six-hour day is as unknown to longshoremen as it is to industry generally. In addition, the practice is limited on the Pacific Coast waterfront to longshoremen and certain closely related dock workers alone. All other waterfront labor works on an eight-hour day with overtime pay only after the expiration of eight hours of work. At the present time, therefore, longshoremen on the Pacific Coast who receive $1.10 per hour earn, for the first six hours, $6.60, and for the next two hours, $3.30, or a total of $9.90 for the eight hours between 8 a. m. and 5 p. m. In the port of New York, with which port it has been stipulated by the parties a close relationship in wages exists, longshoremen receive for the eight hours between 8 a. m. and 5 p. m., $10.00, or 10 cents more per day than is received by the Pacific Coast longshoremen. Other factors, as will be pointed out hereafter, completely offset this small differential presently existing in favor of the Atlantic Coast longshoremen.

The undersigned would have concurred in the recommendations to deny the Employers Association a restoration of the eight-hour day, providing the panel had recommended against any change in the wage rates for Pacific Coast longshoremen. To increase the basic hourly wage rate while at the same time retaining the six-hour day, however, is not only an illustration of the majority approach criticized at the outset of this opinion but is also an example of how to create wage inequities.

Little Steel Formula

In February of 1941, longshoremen on the Pacific Coast received a basic hourly wage rate of $.95. On Feb. 20, 1941, an increase of five cents an hour was received from the Employers Association. Thereafter, and in February 1942, an additional increase of ten cents an hour was given those longshoremen pursuant to an arbitration award. It is clear, therefore, that, on the face of the record, the longshoremen have already received a wage increase in excess of the 15 per cent called for under the Little Steel formula. A dispute arises in this case by reason of the union's insistence that the five-cent increase given by the Employers Association in February

1941 was the culmination of negotiations which had extended over a long period of time prior to February of 1941. If this is true, then the five-cent increase given in 1941 cannot properly be credited against the 15 per cent owing under the Little Steel formula. Under the doctrine of the Lever Bros. Company case (3 War Lab. Rep. 48 [17 War Lab. Rep. 197]), however, if payment of the amount required to satisfy the Little Steel formula will result on a "round of general increases" in this industry, no further increase is permissible.

The undersigned is fully cognizant of the responsibility owed by industry, as well as labor, to acknowledge and abide by both the spirit and the letter of the Little Steel formula. The doctrine is a technical one and in the ordinary case is either owing or not on the basis of simple mathematical computations. Like so many of the issues in this case, however, the solution is not so simple. If the problem here involved merely the question of whether the five-cent wage increase given in February of 1941 was the culmination of collective bargaining which antedated January first of that year, the undersigned would vote to resolve this issue in favor of the union. Such a decision would be proper, I think, because the question of whether the Little Steel formula has been satisfied is at least debatable, and doubt under such circumstances should be resolved in favor of the employees.

My opposition to a five-cent increase for longshoremen on the Pacific Coast under the Little Steel formula rests on the ground that such an increase will very likely result in a "round of increases" not only for longshoremen in ports off the Pacific Coast but for other classes of waterfront employees on the Pacific Coast itself.

From what has been written previously in this opinion on the relationship between New York and Pacific Coast longshoremen's rates, it should be clear that a five-cent increase on the Pacific Coast will automatically result in a demand for an increase in the same amount in the port of New York and elsewhere. In the case of waterfront labor, other than longshoremen, the evidence before this panel shows that the wage rates for dock workers, clerks, and warehouse employees all constitute a part of a common wage structure with the longshoremen, and all of them bear a traditionally established relationship to the longshore rates. Any increase in the basic wage for longshoremen must necessarily unstabilize the existing wage relationships between the various groups of waterfront employees. This is particularly serious as a matter of wage stabilization when it is recognized that all of the other groups have already received everything that is coming to them under the Little Steel formula.

At the present time dock and terminal work on the waterfront is paid for at straight-time rates which in no case exceed the rate of $1.10 paid for longshore work and are generally well below the longshoremen's wage level. In the case of warehousemen, whose work in shoreside warehouses is very similar to longshore work, the same union as is involved in this case has recently executed a contract calling for a straight-time wage rate in the San Francisco Bay area of $.925 an hour. It may be stated categorically, I think, that longshoremen rates are well above the brackets of sound and tested going rates for comparable work in the several labor market areas on the Pacific Coast. The employers have directed the panel's attention to a release by the Board's Division of Public Information of Oct. 1, 1943 [11 War Lab. Rep. XXX; WCDS 285], in which it is stated in Sec. G as follows:

"G. Instances in which an allowable increase should not be approved:

(1) A cost-of-living adjustment may not, in the discretion of the Board, be approved in full if it would bring the wage rates or average straight-time hourly earnings for any job classification above the maximum of the bracket of sound and tested going rates for that classification in the labor market area."

This Board has frequently followed the above policy declaration by refusing to award the balance owing under a strict application of the Little Steel formula to employees whose present rates were above the maximum of the bracket of sound and tested going rates for the particular classification in the labor market area involved. The undersigned believes it should have been followed here by the panel majority. Historically, longshoremen have always received rates of pay on the Pacific Coast well above community wage levels. It is hardly to be expected, however, that highly paid workers will continue to preserve full peacetime differentials during wartime. As the former coast arbitra-

tor* stated at the time he made award of a ten-cent wage increase to the longshoremen in 1942:

"He (the arbitrator) has granted a wage increase with much hesitancy because he believes there is much merit in the arguments of counsel for the employers that highly paid workers should not expect large wage increases during the war period. He subscribes to the view that labor, especially workers in the highly paid brackets, have no right to expect that they should receive wage increases during this war period which will enable them to keep dollar for dollar pace with upward changes in the cost of living. Labor too must make financial sacrifices in the interest of checking the menace of inflation.

Neither the panel nor this Board is concerned here with substandard wages or working conditions. Both are at a high level by comparison with workers in other industries on the West Coast and elsewhere. The writer is familiar with this Board's policy of considering only basic hourly rates in determining whether wage increases are due under the national wage stabilization program. When the Board is confronted, however, with the question of whether the doctrine in the Lever case should be applied, some consideration should be given to average earnings as well as base hourly rates. In this industry the evidence before the panel shows that average annual earnings for longshoremen varied as between 1941 and 1944 in the several major ports on the Pacific Coast as follows:

Year	Seattle	Portland	San Francisco	Los Angeles
1941	$2,422.27	$1,687.25	$2,774.00	$2,538.47
1944	3,612.00	3,084.60	4,405.44	3,824.60

In the light of all the evidence in this case, and particularly the relationship the parties have stipulated exists between wage rates for East and West Coast longshoremen, the undersigned believes that a five-cent wage increase as recommended by the panel's majority to satisfy the Little Steel formula is bound to have repercussions which will contribute to undermining wage stabilization on the waterfronts all over the nation. Under these circumstances this Board should reject the union's demand for a five-cent increase under the Little Steel formula.

Inequalities or Inequities

The undersigned concurs with the public member in denying the union a 15-cent increase in order to equalize the straight-time earnings of longshoremen on the Pacific Coast with straight-time earnings of longshoremen in the port of New York. As pointed out above, there is now a 15-cent an hour differential in favor of the New York longshoremen providing the 6-hour day on the West Coast is ignored. Even a five-cent increase under the Little Steel formula, however, will necessarily result in upsetting the present balance between the Pacific Coast and Atlantic Coast longshoremen rates. To consider what would happen to that balance in the event a 15-cent increase were awarded Pacific Coast longshoremen is to deny the existence of any present inequity between East and West Coasts in this case.

It is said in the majority report that the parties have agreed "that parity should exist between East Coast and West Coast longshore wage rates." This is incorrect. The actual stipulation was, "There has been in the past a sensitivity in respect to wages, and wage changes on the Atlantic Coast have resulted in a demand for wage changes on the Pacific Coast and presumably vice versa." (Tr., Vol. IX, p. 1,050) This does not mean that the parties have stipulated that there is or should be the identical basic hourly wage rates on the two coasts, so long as the West Coast pays overtime after six hours and the East Coast only after eight. The fact is that the Employers Association offered exact parity, namely, the eight-hour day and the New York wage rates, to the union, but that offer was rejected.

Specific Penalty Changes

A complete penalty cargo agreement was negotiated by the parties in 1937 and approved by referendum vote of the entire union membership. No change in the nature of penalty cargoes has occurred as a result of the war. The evidence in the record shows (Exh. NN, Tr., Vol. VI, pp. 726-727) that the present schedule of penalty cargo rates covering Pacific Coast longshore operations is the longest in the country. The panel majority has voted to increase certain of the penalty cargo rates provided for in the

* Hon. Wayne Morse, now Senator from Oregon.

agreement under consideration and has also voted to include certain new items in the schedule. This action has been taken despite our lack of knowledge of or experience with penalty cargoes.

There has been a resort to the penalty cargo rates now in effect in the port of New York to justify certain of the increases. The evil of this practice lies primarily in the failure to make proper allowance for the fact that, while in certain particulars more is paid in the port of New York on certain types of penalty cargo than on the West Coast, the list of penalty cargoes is very much shorter than the West Coast penalty cargo list. To be specific, only nine for New York as against fifty-two for the Pacific Coast.

The claim of the Employers Association that the Pacific Coast penalty cargo schedule is much longer and more liberal than the New York schedule of penalty cargoes would seem to be substantiated by the employers' offer to accept the entire New York penalty cargo list and rates in return for that presently obtaining on the Pacific Coast. The union rejected this offer. and so has the majority of the panel.

The panel majority has granted the union increased penalty coverage in the handling of cement. dehydrated sulphur and lime in sacks, uncrated chemically treated lumber, and refrigerated cargo. The undersigned dissents from all such allowances on the ground that the record in this case does not justify such increases. Cement, when handled in bags with inner containers, would seem to be less objectionable and obnoxious than when handled otherwise. Uncrated chemically treated lumber has been added to the list on the basis of a vague demand by the union, which is so lacking in definitiveness that the record contains no justification for the award. The employers pointed out that. while the process of chemonitting discolors lumber, "* * * it is wholly inoffensive after passing through the seasoning process which is always followed." (Tr., Vol. VI. pp. 755. 756) No other longshore agreement awards a penalty for handling dehydrated sulphur and lime in sacks or for handling chemically treated lumber.

Overtime and Pyramiding Rates of Penalties and Skills

Overtime

The longshore industry throughout the United States has always applied differentials for skill or penalty on top and not as a part of the basic hourly wage rate. The panel majority, however, has recommended a departure from this practice on the Pacific Coast, which again will unquestionably result in unstablizing similar working arrangements that now obtain in the other ports of the nation. The undersigned has no quarrel with the panel majority's conclusion that it is the general practice in other industries to add skill differentials to the base hourly rate for the purpose of determining overtime. These longshoremen on the Pacific Coast and elsewhere, however, receive overtime not after 8 hours per day or 40 hours per week but on Sundays and holidays and after 5 p.m. and before 8 a.m. on weekdays even for the first hour of work. In addition, as previously noted, overtime is paid to longshoremen on the Pacific Coast after six hours of work between 8 a.m. and 5 p.m. These overtime practices are not general industry practice but represent an advantage enjoyed by longshoremen alone. There is no propriety, therefore in permitting industry practice to influence our recommendation on this matter, and the union's request should be denied. In the case of obnoxious cargo, no justification exists for an overtime premium. The cargo is precisely the same whether it is handled before or after overtime hours commence.

Pyramiding

The panel majority has also recommended that members of a gang who now receive a premium for skill shall have superimposed on that premium any penalty rate enjoyed by other members of the gang even though they do not suffer the penalty condition upon which the penalty rate is predicated. At the present time, in those instances where a skilled member of the gang is actually affected by the cargo for which a penalty rate is paid, he recieves both differentials. (Tr., Vol. VI, pp. 720-721)

In addition, the existing agreement specifies that, if a gang member is receiving a skilled rate and the offensive rate paid other members of the gang is higher, he receives the higher rate even though not, subject to the offensive cargo. The undersigned can find no proper reason for changing these practices.

Holidays

Under the existing agreement, longshoremen on the Pacific Coast enjoy

more holidays than any other industry in the country. By granting longshoremen in the state of Washington state-wide Election Day as a holiday, the majority has recommended the granting of a special holiday to longshoremen in this state not recognized for any other class of employees. While this industry is exempt from Executive Order 9240 [8 War Lab. Rep. XXVII, 26 War Lab. Rep., No. 3, IX; WCDS 20], it seems clear that there was no intention on the part of the Secretary of Labor to depart from the spirit of this Executive Order. In the opinion of the undersigned, the action of the majority constitutes such a departure and is also objectionable because it furnishes the basis for a claim by other employees in the state of Washington for a similar holiday.

Retroactivity

The majority has recommended retroactivity to Oct. 1, 1944 (date of expiration of the old agreement) for all money items awarded by the panel except the increased penalty rates on cement, refrigerated cargo, and lumber and the new penalty rates on lime, sulphur, and chemically treated lumber. When the nature of certain of the awards recommended by the panel majority is considered, the enormity of the job of computing retroactivity which will confront individual employers is easily understood. For example, ascertaining which men have handled explosives since Oct. 1, 1944, and the hours to be credited for that work, the identification of, and the hours worked by, winch drivers in San Francisco since October 1944, and the calculation of over nine months of back vacation pay for every longshoreman on the Pacific Coast waterfront. I wish to record my dissent from this recommendation and to request that the Board, except for any increase that may be ordered in the basic wage rate under the Little Steel formula, make all other items effective as of the date upon which the report of this panel is released. Wholly apart from the inflationary aspect, the administrative and clerical work required to compute retroactivity on the basis recommended by the majority will be enormous. In some instances, as in the case of the San Francisco winch driver, I feel sure no records will be available permitting a determination of retroactivity to be made, but each employer member of the association will be required, nevertheless, to make a most detailed search of complicated and voluminous records. This is hardly the time to impose additional burdens of such a nature on an industry which is suffering acutely from manpower shortages not only in connection with its waterfront operations but in its offices as well.

One other consideration must be taken into account by the Board in connection with retroactivity in this case. The longshore industry employs a large number of casuals, particularly in these times. It is of the utmost importance, therefore, that, in any award of retroactivity that may be made, a procedure be set up which will permit the books of the individual employers to be closed, and claims for retroactivity barred, in those instances where it is impossible to locate former employees within a reasonable length of time.

Travel Time and Hiring Halls

The panel has unanimously recommended that a branch hiring hall be established in the East Bay area of San Francisco harbor.

I do not think the majority opinion on this subject makes it clear that, as I understand it, the panel unanimously intends that the National War Labor Board shall retain jurisdiction of this matter so failure of the parties to agree on details will not prevent the establishment of the branch hiring hall.

In the case of the union's demand for an increase in travel-time allowances, I have concurred with the other members of the panel in recommending to the Board that a proper allowance be made in the San Francisco area for travel time and compensation both ways once a hiring hall is established and the man is dispatched from the appropriate hall to a job which should pay travel time. I do not believe, however, that the establishment of a branch hiring hall in San Francisco should necessarily lead to a change in travel-time allowances paid in other ports on the Pacific Coast. Appropriate travel-time allowances are clearly matters that should be determined in the light of local conditions, and an examination of the record in this case will not disclose any basis on which this panel, or the National War Labor Board, could properly award two way travel time in all ports on the Pacific Coast. Uniformity for such an item would re-

quire a complete disregard of local conditions which vary to such an extent that travel time is not paid at all in certain ports under certain circumstances.

In passing upon the recommendations of this panel, the Board should, in the opinion of the undersigned, also make it clear to the parties, that, in any negotiations that may be conducted respecting travel-pay allowances, either for San Francisco or elsewhere, such allowances are intended as actual compensation for time spent in travel to and from a job and not as a disguised wage increase.

Grievance Procedure

The panel majority has recommended the adoption in substance of the union's demand for a radical change in the entire grievance procedure now existing in this industry on the Pacific Coast. The present grievance procedure is the product of the experience of the parties over a period in excess of ten years. The fact that the union desires a change is perhaps some evidence that the present procedure is not deemed adequate by one of the parties. At that same time, it is curious that the basic proposals of the union involved the reinstitution of certain practices, particularly arbitration on the port level, which the parties have tried in the past and discarded.

The testimony in the record on this issue indicates that the absence of a large number of arbitrations by the coast arbitrator is regarded by the union as evidence that the present grievance procedure is not adequate. Clearly, such a record, if it exists, is susceptible to quite a different interpretation. It is generally recognized by unions, as well as by employers, that to make arbitration too easy is to invite the submission of petty disputes to arbitration rather than to settle them at other steps of the grievance procedure. The existing grievance procedure, however, places no obstacles that I can discern in the way of arbitration. All that is required is a request by either party following a dispute, and the services of the coast arbitrator would appear to be available.

The panel has approached the issues in dispute in this case on the premises that we are dealing with a coast-wide industry subject to a coast-wide contract. Uniformity has been the objective until we reach the grievance procedure. The majority recommendation on this issue, however, would take the industry back in substance to port contracts. This is a serious matter when it is remembered that there are 24 active ports on the Pacific Coast.

Additional objections to the revised grievance procedure recommended by the majority exist by reason of the fact that it is cumbersome and will involve a substantial increase in expense to both parties.

For example, (1) both parties will probably insist that grievance proceedings at the port level be formal and that full transcripts and records be maintained by the various labor relations committees; (2) innumerable appeals will be taken from decisions by the arbitrators at the port level with additional arbitration proceedings required at the coast level at further expense. Settlement of important grievances at the port level will be largely precluded. In this connection, it should be noted that the present grievance procedure, with its terminal point ending in arbitration, would seem to conform exactly to the requirements of this Board; (3) conflicting interpretations in the several ports will necessarily result and this will be destructive to uniformity and can be inconsistent with the theory of the single coast agreement; and (4) expenses and salaries of numerous new impartial chairmen will be substantial.

In the last analysis, the grievance procedure issue resolves itself into this—shall there be arbitration between a responsible union and the employers association, parties to the contract, at the coast level, with coast authority over a coast agreement or shall there be innumerable port labor agreements with innumerable port squabbles?

Longshore Efficiency and Employers' Affirmative Demands

The claim of the employers association that the union and its members have failed for many years past to perform longshore work with reasonable efficiency and that the level of production in this industry on the Pacific Coast has been steadily declining, was mentioned at the outset of this opinion. It is a charge which must be considered in connection with virtually every important issue in this case and has been fully substantiated by clear and convincing evidence, including evidence from admittedly impartial governmental sources.

As early as 1936, in negotiations for a new longshore contract, the employers vigorously asserted that the decline in longshore efficiency was then so serious that it should be recognized in the rate structure. (Tr., Vol. V, pp. 508-510)

The maritime strike on the Pacific Coast in that year involved this question as one of the major issues. But the new agreement at the conclusion of the strike brought no change and no relief. The employers continued to complain of constantly declining production from 1937 to 1939, when again negotiations were instituted for an amended contract. (Tr., Vol. V, pp. 519 et seq). These negotiations continued until Dec. 20, 1940. At this point in the history of the relationship between the parties, no one can deny that efficiency had declined inordinately for the union in the signed agreement bearing that date acknowledged the decline and promised reform. (Tr., Vol. V, p. 520)

In the agreement, the union promised to provide and maintain "restoration of reasonable efficiency * * * in the performance of longshore work and reasonable compliance with the provisions of this contract." (Exh. L, Sec. 12) The union also agreed that, in subsequent wage reviews, the restoration of production and efficiency and compliance with the contract would be material and relevent factors and that the first wage review to be held in February of the following year would yield a wage increase of five cents per hour straight time, and ten cents per hour overtime only in the event that that pledge was adhered to. Accompanying this contract was the written guarantee of the president of the Congress of Industrial Organizations, Mr. Philip S. Murray, and its past president, Mr. John L. Lewis, each underwriting and guaranteeing the performance of these obligations. (Exh. M, Tr., Vol, V, pp. 520-521)

But there was no restoration of efficiency. For, in the wage review of February 1942, conducted by the Hon. Wayne Morse, who had long acted as coast arbitrator under the agreement, it was specifically declared by him:

"The arbitrator, as the result of his several years of experience in arbitrating disputes within the industry and observing work practices in various ports of the Coast, wants to say very frankly, here and now, that there is merit in the employers' contention that the longshoremen have not fully performed their work efficiency obligations under their collective bargaining contract." (Tr., Vol. V, p. 529; Exh. O, p. 20)

Again he said, referring to negotiations leading up to the longshore contract, that the minutes of the labor relations committee, union publications, testimony of witnesses, and records in previous arbitration cases, as well as the arbitrator's own personal observations, all supported the inescapable conclusion that there was need for improvement in the work efficiency of longshoremen. (Tr., Vol. V, p. 530)

The arbitrator granted a wage increase, however, solely as an incentive to longshoremen to make evefy reasonable effort to increase their work production and efficiency. (Tr., Vol. V, p. 530)

The employers' testimony clearly demonstrates, nevertheless, that efficiency did not improve after that wage increase; instead, it continued to decline. The employers produced exact records of production involving commodities continuously handled under uniform conditions. As to them, there can be no claim of inaccuracy nor variable factors to cast doubt upon their reliability. (Exhs. II and JJ) Indeed, the union makes no denial of the continuing inefficiency but seeks to excuse it upon the ground that the industry has been compelled to work during the national emergency with a large number of new and inexperienced men. One would assume, however, that this factor should be largely offset by the desire of individual longshoremen, whether working singly or in gangs, to contribute to the war effort by loading ships destined for our armed forces overseas as speedily as possible.

Government Statistics Respecting Efficiency

If any confirmation of the inefficient state of longshore work on the Pacific Coast is required, it is to be found in the longshore reports for the calendar year 1944 and the first quarter of 1945, submitted by the United States Army. These reports cover the important ports of the United States. Copies are included for the information of your Board. The significance of these reports in connection with the efficiency issue is clear.

In 1944, a gang in New York loaded an average of 15.1 tons of cargo per hour. In San Francisco a gang loaded only 11.6 tons. In 1945 a New York

gang averaged 16.7 tons per hour and a San Francsico gang, 13. I mention the comparison between the ports of New York and San Francisco particularly because the former is the largest port on the Atlantic, and San Francisco is the largest on the Pacific. But, the same reports also show that the average gang on the Pacific Coast handled only 13.6 tons per hour in 1944, as compared with an average of 15 tons on the Atlantic and 20 tons on the Gulf. There was no substantial change in 1945. The Army figures covering weight tons per gang-hour for three ports on the Atlantic and Pacific Coasts are as follows:

City	1944	1st Quarter 1945
New York	15.1	16.7
Philadelphia	17.7	17.8
Baltimore	16.4	19.1
San Francsico	11.6	13.0
Los Angeles	12.5	12.3
Seattle	15.3	13.6
Coast	**1944**	**1st Quarter 1945**
Atlantic Coast	15.0	16.9
Gulf	20.0	21.8
Pacific Coast	13.6	12.9

I concur in the chairman's conclusion that War Shipping Administration data are based upon inadequate material and hence have little value—but, for what value they have, they confirm the fact that a San Francisco gang produces substantially fewer tons per hour than does the average gang in New York, Philadelphia, or Baltimore.

Although it should be clear that it is the weight tons per hour handled by the gang which furnish the proper basis of comparison,* the majority report is confined to a discussion of tons per man-hour and costs per ton. Neither of these comparisons are relevant. By applying the hours of work of extra men to the tons of cargo handled in an hour by the gang, the production per man-hour in New York is diminished, and the efficiency of the men handling cargo is diluted. This does not alter the obvious fact that the longshoremen who handle the cargo in New York handle more tons per hour than men doing the same work handle in San Francisco. All that the man-hour comparisons demonstrate is that, under New York practice, there are extra men in the gang. The fact remains that longshoremen in the hold on the Atlantic and Gulf handle a great deal more tonnage per gang than is the case in San Francisco or elsewhere on the Pacific.

The so-called cost figures are wholly misleading. They consist simply of applying to the longshoremen in the various ports the wage rates which prevail for an eight-hour day between 8 a.m. and 5 p.m. They are not actual costs—they are purely theoretical and reflect the differences in the wage scales which prevail in the various ports and also the additional cost of extra deck men assigned in New York and certain other Atlantic and Gulf ports. Yet, even man-hour or cost comparisons are adverse to the Pacific Coast.

Briefly, then, the significance of these statistics is simply that a longshore gang, in either Atlantic or Gulf ports, handles more tons per hour than a gang on the Pacific. The disparity is not slight. In New Orleans the gang handles 20 tons in the same time that the San Francisco gang handles 11.6—the New York gang handles 15.1 while the San Francisco handles 11.6—and, if we turn to the more recent 1945 figures, we find a similar comparison between the rates of production in these principal ports of the country. These reports, I believe, confirm the employers' charge of longshore inefficiency on the Pacific Coast and confirm the condition acknowledged by the union in its 1940 agreement. They also confirm the necessity of the restoration of efficiency which the union pledged and support the decision of the Hon. Wayne L. Morse in 1942 that a restoration of efficiency was long overdue on the Pacific Coast. Finally, there is no reason to question the accuracy of any of the evidence of inefficiency, including the Army data, in view of the fact referred to in the majority opinion that not even the union has made claim that efficiency has been restored since 1942.

Union Pledge to Restore Efficiency

I have already pointed out in this opinion the importance and the relevancy of the efficiency issue in connection with the other issues in this case. The panel majority suggests

* The foregoing data on efficiency are on a weight ton (2,240 lbs.) per gang-hour, which is the most comparable test. This was clearly established throughout the hearing. Weight tons per gang-hour is universal practice in the industry. It is the measure of hatch loading, of berthing time, and of turn-around of vessel. Weight ton per gang-hour eliminates the variables bound to enter in among the many ports and among the many operations in each port.

that the union has a positive right to obtain wage increases for its members under War Labor Board policy, irrespective of whether or not the union has upheld the covenant of its agreement to restore efficiency in the performance of longshore work. I do not concur in this view of Board policy.

Collective bargaining contracts involve mutual and reciprocal obligations. One essential obligation of responsible unions under all such contracts is that the workers shall perform their work with reasonable efficiency and regard for the interest of the employer and the industry. In this case, however, the union has subscribed to a pledge to restore reasonable efficiency and has covenanted that "reasonable compliance" with this obligation shall be a condition of wage increase. There can be no justification for ignoring this explicit promise of the union, and the duty of the panel to direct the union's nonperformance to the attention of the Board in connection with the wage issues cannot be evaded by effacing the pledge from the contract.

The recommendation of the majority of the panel that the union be relieved in its new contract of its pledge to restore efficiency is made on the theory that our action in approving certain of the employers' affirmative proposals will obviate the necessity for any such pledge in the future. All of the important employer proposals are directly related to their right to performance of this union pledge. Had the panel granted these proposals, there might be merit in the majority action. When we deny the most important proposal (steady men and gangs) and "water down" all of the others, I believe the Board should, if the majority recommendations are adopted, refuse to relieve the union of its unperformed 1940 pledge. My criticism of the majority action on the employers' proposals is as follows:

Discipline

On the subject of discipline, the panel has recognized the need for correcting an existing situation so bad that even theft of property is not a ground for discharge. Although the offense (theft of property transported in interstate commerce) is a felony under the federal statutes, it is only after a second theft that the majority of the panel recommend mandatory dismissal. It is worthy of note that larceny, committed however frequently in the past, has furnished no basis for effective action.

In respect to the very dangerous practice of smoking in prohibited areas in violation of law, with enormous danger to life and property, the penalties recommended are too light.

The panel majority sees no reason for penalizing longshoremen who violate working requirements and refuse to comply with their agreement or engage in slowdowns. It is said in the public member's opinion that no case in favor of this proposal was made. I would think none need be made.

Operation of Hiring Hall

The panel has recognized the justification for the employers' complaints concerning the manner in which dispatchers are selected and controlled by the union. The employers contribute one-half of the cost of maintaining dispatching halls. The employers are dependent upon the management of those halls for their labor. Under the present contract with the union, the employers are nominally invested with joint control of the hiring hall. But the union, through its right to select and control the dispatchers, controls the work as well. Obviously, the employers should have a full and equal share in the selection of dispatchers.

Furthermore, the undisputed evidence shows that dispatchers are necessarily inefficient because of the uncertainty of their tenure of office, rotation in their selection, and their inability to answer to the labor relations committee for control and management of the hall.

We have recommended that the port labor relations committees pass on the qualifications of all candidates for election to the dispatchers' job, and, if there should be disagreement, the coast or port arbitrator shall settle such disputes. We have also fixed the dispatchers' minimum tenure at one year.

Annual elections of dispatchers, I am afraid, will largely destroy the effectiveness of our proposal for the dispatcher who expects to be reelected every 12 months must constantly curry union favor. The union, therefore, will retain full control of the dispatcher and the hall, or the evil of rotation and inexperience will begin again. These probabilities, it seems to me, might be minimized by permitting the dispatcher to be removed from office only by the Port Labor Relations Committee.

Steady Men and Gangs

In addition to what I have written on this subject in connection with the vacation award recommended by the majority, I wish to make the following points:

The longshore agreement itself, Exh. L, has always provided (Exhs. G. H. K, & L, Sec. 11 (a)) that the employers should have the right to select the men deemed by them best suited to the conduct of their work. The union nevertheless, over a period of years, through its control of the dispatching hall, has deprived the employers of the right, universal in industry, to hire men and gangs steadily and continuously.

In the San Francisco dispatching rules, specific provisions may still be found for the hiring of men and gangs on a steady basis. Care is also taken therein to preserve equal division of work opportunities. (Exh. N-3) There is no question, then, but that this Board in ordering the union to restore steady employees in this industry, will not interfere with the equalization of longshoremen's earnings. Indeed, the record over a long period of years demonstrates that earnings were successfully equalized in both Seattle and San Francisco while steady men and gangs were employed. (Vol. X, pp. 1196, 1347 and 1348)

The union concedes (Vol. X, p. 1192) that to restore the right of employers to hire men steadily would improve efficiency. The union signed a pledge to restore efficiency. Why, then, is this simple means of partial performance rejected by the majority? Certainly it should not be for the reason assigned by the union—that steady men and gangs would receive preferred treatment because they would not be required to report at the hiring hall for assignment with longshoremen who were working off the Board.

There is a point beyond which union power cannot be exercised without endangering union security. The imposition of restrictive "make work" practices upon management with resultant inefficiency and high operative costs is a threat not only to our system of competitive enterprise but to the unions as well. High wages and 60 million jobs in private industry, which are announced objectives of the Congress of Industrial Organizations, will not be permanently achieved without cooperation from unions and their members in increasing the efficiency of our industrial operations. I do not subscribe to the statement in the opinion of the panel's public member that the issue on restoration of the steady gangs in this case is an example of "* * * the natural opposition of management to the necessarily leveling effect of trade unionism." I trust the union will not subscribe to it either for to do so is to admit that trade unionism necessarily results in declining efficiency, less production, and higher costs.

Size of Gangs and Unnecessary Men

On this subject the panel has recognized the need for relief by establishing in San Francisco the gang system which prevails elsewhere on the Coast. The majority, however, declines to recommend that the employers be given the full relief to which they are entitled.

There should be no hesitation to support the right of the employers, as was originally intended under their agreement, to engage and retain in their employment only the men needed to perform the work.

I believe that the public member is incorrect in stating that this issue deals with the size of a standard gang. The employers make no recommendation that the standard gang be altered, other than to establish in San Francisco the gang system elsewhere prevailing. No change has been asked in the present power of the Labor Relations Committee to organize standard gangs nor to dismiss members of regular gangs when their job is completed. What the employers seek is the right, when hiring men in addition to the standard gang, or in hiring men otherwise than in gangs, to have dispatched to them the men ordered—no more and no less, and to dismiss them when their work is finished. All that the employers have asked is that there be no rule or practice through union dispatchers, union rule, or job action to compel employers to accept more men than the job requires or to continue to employ men after their work has ended. This the panel should have recommended for adoption by your Board.

Right to Assign Men

I can see no justification for hesitating to adopt the employer proposal that men be assigned to their duties as the needs of the employer and the exercise of good management require. This right the employers should have under the present agree-

ment for that agreement provides that the employers shall be free to direct the operations in the manner which they consider best suited to the conduct to their business.

The condition to which the employers rightfully object is the refusal of the men and the union to permit the exercise of this right under the agreement. Complete obstruction is accomplished by longshoremen insisting they shall select their positions in the gang and their duties on the job. (Tr., Vol. X, pp. 1235-1237), a right which they have never legally had under the agreement and a right which the union specifically denied that longshoremen possessed. (Tr., Vol. VI, p. 703)

It is not my impression, as the majority states, that the employers here are concerned only with controlling idleness. (Tr., Vol. VIII, p. 1003 and Vol. X, p. 1353), but, assuming that to be the sole purpose, it is a wholly justified purpose. Idle men on pay are inconsistent in the extreme with the union pledge to restore efficiency. Idle men are unproductive and their idleness on pay cannot be justified.

I believe the panel majority is also mistaken in asserting that all longshoremen are dispatched to do a specific job and need do no other. On the contrary, the present agreement provides that the employer shall be free to direct the performance of work in the manner best suited to the conduct of its operations. No working rule on the Pacific Coast entitles a longshoreman to be dispatched to perform specific duties only. On the contrary, the longhoremen are ordered without reference to their duties. In the organization of regular gangs, the committees and the dispatcher designate the number assigned to hold or dock for convenience in dispatching only.

If the panel majority's theory is adopted, a new and serious source of aggravated decline in efficiency would be likely to result because of our misinterpretation of the longshore agreement.

In acting on this proposal, this panel should have considered the practice in the longshore industry throughout the country and the universal policy in the balance of American industry, where management still retains and practices the right to assign men to their work and to pay men only when working and not when they are idle.

In this situation the panel majority has not merely rejected a simple and reasonable means of restoring efficiency but has rejected enforcement of a long standing right of the employer.

Daily Reporting and Short Gangs

The panel majority intimates that longshoremen in Los Angeles and San Francisco elect to work steadily. Reference is made to the estimated work of gangs in Los Angeles for 1944, which was 291 working days in the year. The panel majority, in my opinion, misunderstood the significance of those figures. They mean that every longshoreman in a gang in Los Angeles could have worked 291 out of 302 working days (Exh. VV, Tr., Vol. VII, pp. 901 et seq.).

The figures for San Francisco (Exh. TT) and Portland (Exh. UU) likewise show that the average longshoreman, despite the opportunity to work a full year, actually averages a very high percentage of voluntary idleness.

In view of the manpower shortage and because the hiring halls were created so that men would be available to meet peak needs and, further, because the work of each port is reserved for registered longshoremen, the employers ask only what is customary in all employment—that the workers report regularly for their work and be available to do the work when needed. The need for this rule is especially important if money is to be made available in the form of vacation pay, justified upon the assumption of continuous service and need for rest. Yet, the panel majority rejects this obligation, standard in the balance of American industry, and, in an effort to support their rejection, refer to the possibility that men might be required to report after excessively long periods of work. There is no need to assume any such burdensome requirement.

The proposal of the employers merely requests daily reporting at such times as are prescribed by local rules of the Labor Relations Committee and recognizes sickness and other justifiable causes as an excuse for not reporting. The matter of reasonable rules to regulate such reporting could properly be delegated to the local port committees.

It is interesting to observe that on this issue the panel majority reports that the employers have demonstrated that comparisons with other industries are unrealistic. If such a comparison is unrealistic on this issue, is it not reasonable to inquire how it becomes realistic in respect to such matters as wage increases and vacations?

The panel majority recommends certain penalities for failure of members of regular gangs to report for duty. This rule of reporting should apply to longshoremen or none, and membership in a regular gang should not carry with it a penalty which is quite justifiable but which is not imposed on the balance of the workers. There is only one real remedy, and that is the remedy which the employers propose—that all longshoremen shall report regularly for work and shall be available continuously or be stricken from the registration list.

Abolition of Maximum Load Limits

The panel has recognized the necessity of relieving the industry of the severe limitations on production imposed by load limits contained in the present contract. The war need for production and the experience of the Navy in increased efficiency with larger loads alone would require such elimination. The union concedes that to increase the size of the loads will increase production. Yet it opposes this measure of compliance with its promise to restore efficiency. The panel majority is unwilling to give full recognition to the need for increased production and merely directs renegotiation of continued maximum loads. This is only partial relief, affords no promise of any change in the contract, and gives no procedure or assurance that any relief will be secured.

Conclusion

It is plain to me that the relief sought by the employers in their several proposals is reasonable. What they ask generally is nothing more than future compliance with certain provisions of the present contract. They are entitled to such affirmative action from this Board as will insure against continuation of existing abuses.

They are also entitled to this relief to help restore efficiency in conformity with the pledge of this union and its members. They are entitled to it further under the pledge of the national officers of the Congress of Industrial Organizations. Equity and fair dealing support the employers proposals in that there is attached to the obligation to pay wages a reciprocal obligation to perform a reasonable day's work. In addition, it is in the national interest that the relief requested be given to the end that maximum production will be provided in support of the war effort in the Pacific.

Signed by Lee G. Paul, representing employers.

CITIES SERVICE OIL CO.—

Decision of Regional Board I (Boston)

In re CITIES SERVICE OIL COMPANY [East Braintree, Mass.] and OIL WORKERS INTERNATIONAL UNION, QUINCY LOCAL 366 (CIO). Case No. 111-15340-D, Aug. 9, 1945.

VACATIONS—Liberalization of vacation plan—Industry practice

Employees with 15 years' continuous service are entitled to three weeks' vacation, such provision being in addition to present practice of one week's vacation after one year of service and two weeks after two years. Six of 16 comparable plans, including only plant in immediate area, grant 3 weeks after 15 years of service.

For other rulings see Index-Digest 205.323 in this or other volumes.

PREMIUM WAGE RATES — Night-shift bonuses—Industry and area practice — Continuous operations industry

Employees of oil refinery operating on rotating shifts are not entitled to night-shift differentials, despite panel's contrary recommendation, where such differentials are practically nonexistent in industry. Panel considered that award of shift premiums would be unstabilizing but that it was mandatory under WLB policy because current rates do not include compensation for shift work.

For other rulings see Index-Digest 140.575 in this or other volumes.

Majority decision of Regional Board I (Boston) amending recommendations of panel. Public members concurring: Saul Wallen and James H. Healy. Employer members dissenting on paid holidays and vacation liberalization: Clarence G. McDavitt and Charles F. Watkins. Labor members dissenting on shift premiums, denial of general increase, and severance pay: Michael J. Walsh and Henry Steinfeld.

Directive Order

The Regional War Labor Board for the First Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives and regulations is-

sued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

I. Those terms and conditions mutually agreed to by the parties during negotiations unless necessary Board approval has not been obtained.

II. Those terms and conditions of employment set forth in the recommendations of the panel report dated June 27, 1945, except as hereinafter modified:

A. Wage Reopening Clause

If there shall be any change in the national wage stabilization policy, during the life of this agreement, which permits of adjustments in the wage rate structure in effect under this agreement, either party may, by giving thirty (30) days' written notice to the other party, reopen the matter of wage rates.

B. Paid Holidays

The company shall grant the employees here involved one additional paid holiday.

C. Shift Premiums

The union's request for shift premiums is denied.

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

The procedure to be followed in making the retroactive payment of those employees who have either quit or been discharged, shall be in accordance with the Board's resolution of Apr. 2, 1943. [26 War Lab. Rep. 3.]

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order, either party may request the National War Labor Board to make the remaining portions of the order immediately effective.

This order shall stand confirmed as the order of the National War Labor Board, and, unless otherwise directed by the National War Labor Board, shall take effect fifteen (15) days from the date hereof, unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the position for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Report and Recommendations of the Panel

June 27, 1945

BACKGROUND

This case was certified to the War Labor Board on Apr. 25, 1945. After statements were received from the parties on May 21, 1945, a panel hearing was held on June 11, 1945, at which time parties were represented.

The Cities Service Oil Company is a corporation with its main office in New York City and a number of branch plants throughout the United States. Involved in this case is the refinery in East Braintree, Mass., which has 300 employees.

The Oil Workers' International Union, Quincy Local 366 (CIO) represents the refinery unit at the company involving about 250 employees.

The parties have had contractual relations since 1937, and the last contract was dated July 1, 1942. It has been amended by certain supplements and has been properly reopened for negotiations as to certain modifications. All issues raised by the reopening have been resolved excepting those set forth hereunder.

ISSUES

1. General wage increase and wage reopening clause,
2. Shift premiums,
3. Vacation liberalization,
4. Paid holidays, and
5. Severance pay.

It is agreed by the parties that the effective date of any War Labor Board order with respect to these issues shall be retroactive to Mar. 4, 1945.

1. General Wage Increase and Wage Reopening Clause

Union's Position

The union requests a general wage increase of 10 cents per hour. It bases its request on the statement that the increased cost of living has surpassed twice the rate of increase in wages within this plant and the area. The union asks that any denial of its request be without prejudice to reappli-

cation upon change of War Labor Board policy.

Company's Position

The company states that it has fully met maladjustments and that its rates exceed the sound and tested rates for comparable occupations in the area. It submitted, in evidence, a copy of an arbitrator's award of a general increase, and cites general increases which have been granted since June 1, 1941.

Discussion

The average straight-time hourly earnings of the employees here involved on June 1, 1941, were .983 cents which allowed a Little Steel adjustment of 15 cents. General increases to date total better than 23 cents. These increases granted to all employees at one time were, on June 25, 1941, of .1081 cents; Nov. 19, 1941, of 7 cents; and Oct. 28, 1942, of 5½ cents. Thus, the company has exceeded the Little Steel formula by more than 8½ cents. A comparison of the company's rates, for which there are comparable data available, with the tentative approvable rates for the oil industry in this area, offers no evidence warranting an increase in the company's present rate structure. Comparison with the metal trade brackets established by the Board in appropriate classifications also indicates that a wage increase is not justified. These data are set forth in Exhibit A.

Under present wage stabilization policy, the panel may not recommend an increase based upon the cost of living.

However, in accordance with War Labor Board policy, the panel will recommend that the matter of wages may be reopened, should the pertinent wage stabilization policies change.

2. Shift Premiums

Present Practice

Present practice provides for no shift premium as such. The production workers operate on a rotation-shift plan of three shifts, i. e., the day shift, from 8 a.m. to 4 p.m.; the evening shift, from 4 p.m. to midnight; and the night shift from midnight to 8 a.m.

Union's Position

The union proposes that 10 cents per hour be added to the classification rate for work performed by the 4 p.m. to midnight shift, and 20 cents per hour for work between midnight and 8 a.m. It states that the practice in this area justifies the grant of the union's request. The union admits that such a shift premium is not paid in the industry, but insists that the decision in the Basic Steel case [19 War Lab. Rep. 568] warrants the grant of their request. The union asks for a 10-cent premium for the second shift and 20-cent premium for the third shift as the wages paid in the industry are the highest in the country.

Several disputes on shift premiums in this industry are now before regional boards. The Regional Board of Region VI (Illinois) has granted shift premiums of four cents for the second shift and six cents for the third shift. The refinery of Standard Oil of Indiana has awarded, on Form No. 10, a 4-cent second-shift premium and a 6-cent third-shift premium to some 4,000 employees. This issue is before the Regional Board in California.

Provision for second- and third-shift premiums is not integrated in the base wages. The NRA Code, in 1932 did not so integrate. In 1941, the union requested and received a shift premium as such for a pipefitter working on the second shift.

Company's Position

The company states that its operations require round-the-clock work, and provisions for premium pay are not common in the industry. It cites the *Monthly Labor Review*, published by the Bureau of Labor Statistics, to confirm this statement. It contends that the hourly rates were fixed with the rotation schedule borne in mind so that the hourly rate is higher than it otherwise would be for labor of equal skill. Thus, a shift premium has been integrated into the wage rates. The company objects to the grant of the union request. It contends that there are no companies in any industry in the area operating shifts on a rotation basis in continuous operation which pay shift premiums. To introduce, here, shift premium pay would create unstabilization. There now exists no shift premium as such, and such shift premium has never existed, in this company or throughout the industry.

The company has made an extensive survey covering at least three-quarters of the oil refining industry of the country, which survey shows that such shift premiums are practically nonexistent in the industry. The company contends that Wage Stabilization and War Labor Board directives [22 War Lab. Rep., No. 2, XXIII;

WCDS 540], with reference to shift premiums, do not favor imposition of shift premiums in continuous-operation industries operating on a rotation basis for shifts, particularly where allowance for shift premiums has been integrated in the wage rates. At least, there must be compelling reasons to warrant the ordering of shift premiums in such a situation.

Discussion

The Vinson directive of Mar. 8, 1945, [22 War Lab. Rep. No. 2, XXIII; WCDS 537], as supplemented by the Davis directive of Apr. 24, 1945 [23 War Lab. Rep. No. 4, V], authorizes the National War Labor Board to direct certain classes of wage adjustments as follows (as is pertinent here):

"(e) In industries where continuous operations are made necessary by nature of processes involved and circumstances warranting shift differentials are found by the Board to exist, shift differentials not to exceed four cents per hour for the second shift, and six cents per hour for the third shift.

"(f) Vacation provisions and shift differentials in accordance with stabilized limits (whether higher or lower than the amounts specified in Pars. (a), (b), and (c) above), in case where the Board finds in accordance with its past practice, (1) that such limits have been established in the appropriate area or industry by a clear and well defined practice, the following of which, in the particular case, would not be unstabilizing to the area or industry and (2) that it would be fair and equitable to employer and employee under all the circumstances to follow such practice."

On May 11, 1945, the National Board issued instructions to its subordinate agencies for operation under the Mar. 8 and Apr. 24 directives. Since the shift schedule here involved relates to a rotating shift in a continuous operation, the following portion of the instructions are quoted as pertinent.

"Premium pay for late shifts (rotating or nonrotating) in continuous operations and for rotating shifts in noncontinuous operations.

"A. With respect to premium pay for such shifts, the same questions must be answered: (1) Shall any shift pay be granted? and (2) if such pay is to be granted, what are the appropriate stabilizing limits?

"1. The first problem must be handled on a case-by-case basis, and the granting or withholding of shift-premium pay in a particular case depends on the written findings of fact of the Board or Board agency. Among the relevant factors to be considered is whether the evidence establishes the fact that compensation for the late-shift workers has already been included in the basic wage rates or that other circumstances exist which offset the recognized equity in favor of compensation for the extra burden of night work or rotating shifts.

"2. The stabilized limits for premium pay on such shifts are set forth in the Apr. 24 supplementary directive:

"(a) Except in cases described in Par. (b) below, Board agents may order or approve premium pay for rotating shifts on noncontinuous operations not to exceed four cents for the second and eight cents for the third shift and not to exceed four cents for the second and six cents for the third shift on continuous operations whether or not the shifts rotate in accordance with the procedure outlined in Par. 1 above."

Information submitted by the Wage Stabilization Division of the War Labor Board, which was also made available to the parties, which was taken from a survey issued by the Bureau of Labor Statistics covering 13 establishments in the Boston area engaged in petroleum bulk tank station storage and distribution and three establishments engaged in refining crude petroleum, indicates the following practice:

One plant pays a four-cent differential for the second shift. Fifteen plants do not pay a shift premium. Four of the plants not paying a premium operate on a rotating-shift schedule.

From the evidence, it is apparent that it is not, and has not been, the practice of this company or the other companies throughout the industry to pay second or third shift premiums as such. For the War Labor Board to now order such premiums would, in the opinion of the majority of the panel, be unstabilizing.

However, applying the test set forth in the National Board's instructions of May 11, 1945, to its subordinate agencies for operation under the Mar. 8 and Apr. 24 directives, the majority of the panel finds, as a fact, that evidence does not establish the fact compensation for late-shift workers has already been included in the basic

wage rates. Nor does the panel find that other circumstances exist which offset the recognized equity in favor of compensation for the extra burden of nightwork or work on rotating shifts except the fact that to grant the union request even in modified form would tend to unstabilize.

The majority of the panel is aware that this Regional Board, in a somewhat comparable situation (The American Oil case [20 War Lab. Rep. 393]), denied the union request for shift premiums. The panel is also aware that this Regional Board, in a more recent decision (Bird and Son, Inc. [24 War Lab. Rep. 313]) ordered shift premiums where the company operated continuously and on a rotating-shift basis. In this Bird case decision, this Regional Board apparently interpreted the National Board's decision in the Basic Steel case to clearly justify the payment of night-shift premiums to rotating shift employees in continuous-operation industries regardless of integration in wage rates. This Regional Board also considered the permanency of the added cost imposed by requirements that premiums for rotating shifts be paid and ordered a four-cent per hour premium on second shift and six-cent per hour on third shift.

The panel majority also takes cognizance of the action of the National Board in its very recent decision in the Lever Brothers case [24 War Lab. Rep. 182]. In this decision, the National Board ordered a four-cent per hour premium for second-shift workers and a six-cent per hour [premium] for work on the third shift in an industry which historically has never paid shift premiums as such and which functions on a basis of continuous operation on a rotation shift basis. The panel notes also that, in this Lever Brothers decision by the National Board, there is no evidence in the release thereon that industry members dissented on this issue.

Therefore, although the majority of the panel believes that shift premium pay in the instant case would be unstabilizing, it is also believed that the policy of the War Labor Board is strongly established to award a premium of four cents per hour for work on the second shift and six cents per hour for work on the third shift in an industry of continuous operation on a rotating shift basis, and, on the basis of following Board policy, we shall recommend four cents per hour premium for work on the second shift and six cents per hour premium for work on the third shift.

Since the parties have agreed that any order of the Board in this dispute shall be retroactive to Mar. 4, 1945, we shall recommend that said premiums be paid retroactively to Mar. 4, 1945.

3. Vacations

Present Practice

Employees receive one week after one year's service and two weeks after two years' service with pay based on the average hourly rate.

Union's Position

The union requests that employees with not less than five years of accumulated seniority shall be granted a paid vacation of three weeks. The union states that it is equitable that employees with longer service be rewarded by an additional week's vacation.

The union emphasizes that the Beacon Oil Company in Everett, which the union contends is the company's only competitor in this area, grants three weeks' vacation after 15 years of service. It further contends that the National War Labor Board directed the payment of 3 weeks' vacation pay to employees of 15 years' service in the Sinclair Oil Company case. [Not recorded by NWLB as National Board decision.—Ed.]

Company's Position

The company objects to granting the union's request because its plan is in accordance with prevailing practice in the North Atlantic Sea Coast area. It states that no refinery grants 3 weeks' vacation after 5 years, and the only grant of 3 weeks' vacation that it has found in a survey of the industry is after 15 years of service in one refinery in Philadelphia, 2 in New Jersey, 1 in New York and 1 in Everett, Mass. It points out that, in the Everett, Mass., refinery, if the service becomes broken or noncontinuous after the second year, an employee reverts to the one year "unbroken or continuous service" rating of one week's vacation. It cites the liberality of its present plan, which makes no deductions for sick leave, which is paid for or leave of absence on union business or absences for less than 30 days. It cites its contract clause requiring it to grant accumulated vacation pay to employees leaving the service of the company.

Discussion

Information supplied by wage stabilization and made available to the

parties, shows the following with regard to industry vacation practice:

Of 16 plants employing over 1,700 employees, 1 plant grants 1 week's vacation after 1 year and nothing more. Of the other 15 companies, in addition to 1 week after 1 year, 3 pay for 2 weeks after 1 year, 11 pay for 2 weeks after 2 years, and 1 pays for 2 weeks after 3 years. In addition, 6 of these plants pay for 3 weeks' vacation after 15 years and 1 pays for 3 weeks' vacation after 20 years. The Colonial Beacon Oil Refinery at Everett, Mass., which is the only comparable refinery in this immediate area, pays for 3 weeks' vacation after 15 years of service.

The panel is of the opinion that the practice of competitors to pay 3 weeks after 15 years of service is sufficiently established to warrant the granting of the union's request as modified to provide for 3 weeks' vacation with pay after 15 years of service. We shall so recommend.

4. Paid Holidays

Present Practice

The present practice is to pay for five holidays when not worked.

Union's Position

The union requests two additional paid holidays on the basis of industry practice and particularly because the only competitive refinery in Massachusetts, the Colonial Beacon Oil Company in Everett, pays for six holidays when not worked.

Company's Position

The company objects to liberalizing the present provision for paid holidays since it is now in accord with or exceeds industry and area practice. Of the refineries on the North Atlantic Seaboard which pay for holidays when not worked, two pay for six holidays not worked, and six pay for five holidays when not worked.

Discussion

From the evidence, and upon information furnished by Wage Stabilization (and made available to the parties), the panel is of the opinion that the union is not entitled to have its request in this respect granted; and we shall recommend denial of the union's request.

5. Severance Pay

Present Practice

The present agreement provides that, on termination of employment, employees will be paid vacation compensation in proportion to the time actually worked from anniversary date to date of leaving.

Union's Position

The union requests severance pay of one week after one year's seniority, and two weeks after two years' seniority. Employees with qualified seniority should receive severance pay, on termination of employment, to assist them in rehabilitation and as due recognition of past services.

Company's Position

The company objects to granting the union's request. The present vacation pay clause is appropriate and generous. Severance pay is not general practice in the industry.

Discussion

In view of the well established policy of the War Labor Board not to order severance pay, the panel believes that no further discussion is necessary. We shall recommend denial of the union request.

RECOMMENDATIONS

It is respectfully recommended that:

1. General Wage Increase and Wage Reopening Clause

The union request for a general wage increase of 10 cents per hour be denied but that a clause be included in the present agreement giving to either party the right, upon 30 days' notice, to reopen the wage question, if and when there shall be a change in Wage Stabilization policy.

2. Shift Premiums

Effective Mar. 4, 1945, the company shall pay a premium of four cents per hour to employees performing work on the second shift and six cents per hour to employees performing work on the third shift.

3. Vacation Liberalization

Effective Mar. 4, 1945, Art. 6 of the present agreement shall be amended to provide that employees with not less than 15 years' continuous service shall be entitled to 3 weeks' vacation with pay.

4. Paid Holidays

The union request for two additional paid holidays be denied.

5. Severance Pay

The union request for severance pay be denied.

The parties have agreed that any order of the Board, with regard to the above disputes, shall be effective as of Mar. 4, 1945.

Signed by John J. Murray, representing the public; Elliott Lassey, representing employers, subject to dissent on Issues 2 and 3; and Jack Hurvich, representing labor, subject to dissent on Issue 4.

AMERICAN CHAIN & CABLE CO., INC.—

Decision of Regional Board III (Philadelphia)

In re AMERICAN CHAIN AND CABLE COMPANY, INCORPORATED, HAZARD WIRE ROPE DIVISION [Wilkes-Barre, Pa.] *and* UNITED STEELWORKERS OF AMERICA, LOCAL 1872 (CIO). Case No. 111-15883-D, Aug. 1, 1945.

VACATIONS—Vacation pay — Scheduled workweek—Ceiling on vacation pay

Vacation pay should be computed on basis of average number of hours worked by individual employee or 40 hours, whichever is greater. Company's request that vacation pay be limited to maximum of 48 hours in accordance with National Board's decision in Basic Steel case is denied.

For other rulings see Index-Digest 205.150 in this or other volumes.

Majority decision of Regional Board III (Philadelphia) adopting recommendation of hearing officer. Opinion by William N. Loucks, public member.

ublic member concurring: Frank C. Pierson. Labor members concurring: Joseph L. Hueter and John B. Backhus. Employer members dissenting with opinion: John E. Means and W. W. Benner.

Directive Order

The Regional War Labor Board for the Third Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern relations between the parties:

I. (1) In calculating the number of hours of pay for which an employee shall be compensated for each vacation week, the average number of hours worked by the individual employee shall be used except that in no event shall the number be less than 40 hours.

(2) In all other respects the details of the vacation plan, as agreed to by the parties, shall continue.

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

III. This order shall stand confirmed as the order of the National War Labor Board unless, within 14 days from the date hereof, a petition for review is mailed to or filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Opinion of the Board

Aug. 1, 1945

VACATION PAY

LOUCKS, Public Member:—The sole issue involved in this dispute is whether a ceiling of 48 hours for each week of vacation pay should be included in the vacation plan recently negotiated by the parties. After hearing the positions of the respective parties, our hearing officer recommended that "the Board order that vacation pay be computed on the basis of the average number of hours worked by the individual, but in no event shall it be less than 40 hours per vacation week." The Board, industry dissenting, adopted the hearing officer's recommendation.

We understand that the position of the industry members is that the majority action in this case is inconsistent with a ceiling set for vacation pay in the Basic Steel directive of Nov. 25, 1944 [19 War Lab. Rep. 568]. In discussing this case in the Board session, the industry members argued that the Board should attempt to tailor the hearing officer's recommen-

dation to meet the vacation order in the Basic Steel case.

The public members have voted to adopt the hearing officer's recommendation principally because it is consistent with directive orders on vacation pay issued by the Board in many other cases. We assume that, if there were merit to the industry members' position that our ruling in this case should be geared to the Basic Steel case ruling, that point must have been raised by the company at the hearing before the hearing officer. Moreover, the company has filed no comments upon the hearings officer's recommendation. While this cannot be taken as conclusive evidence that the company accepts the hearing officer's recommendation as the proper determination of this issue, it does mean that the Board now has before it no formal protest by the company against the hearing officer's recommendation.

If any injustice has been done to the company because of a lack of consistency between our ruling and that in the Basic Steel case, the company has the right to petition for reconsideration. The public members feel that, in the absence of company comments, it would be unwise and quite inconsistent with Board policy for the Board to modify the hearing officer's recommendation which we have accepted.

Dissenting Opinion of Employer Members

Aug. 1, 1945

VACATION PAY

MEANS and BENNER, Employer Members:—The issue in this case was the method of determining the vacation pay allowance. The hearing officer recommended and the Board has now directed that the vacation pay should be based on the average number of hours worked per week by each individual, with a floor of 40 hours and no ceiling.

The hearing officer, disregarding the directive of the Director of Economic Stabilization [23 War Lab. Rep., No. 4, V] that there must be a finding of a well defined area or industry practice to support the award but, proceeding on the theory that greater justice might be done to each individual worker, recommended denial of the company's request for a 48-hour ceiling to vacation pay.

The Wage Stabilization Director, in his memo to the Board, misled the majority of the Board by stating that the Basic Steel directive of Nov. 25, 1944, does not specifically place any ceiling on the hours of vacation pay per vacation week. This is in error. What the directive order of the Basic Steel case provided was that the vacation pay should be computed on the basis of a 40-hour week or on the regularly scheduled workweek or in same manner as provided in prior contract, whichever method will yield greatest vacation pay. The present standard contract provision in basic steel industry is:

"Not less than (a) 40 hours per week or (b) the scheduled workweek at the plant, whichever is larger.

"Nor more than (a) 48 hours per week or (b) the scheduled workweek of the plant, whichever is larger."

It should be also considered that the order contains the "floor" of 40 hours, as in basic steel, despite the fact that approximately 275 of the employees average only 31½ hours (scheduled workweek 36 hours). It would seem, under these circumstances, that a ceiling on the vacation pay of the few employees who will average over 48 hours per week is but fair and equitable.

The industry members contend that the provisions for vacation pay in this case should be no larger than the allowance provided by the Basic Steel case, and the order of the Board should be modified accordingly.

LANSDOWNE STEEL & IRON CO.—

Decision of Regional Board IV (Atlanta)

In re LANSDOWNE STEEL & IRON COMPANY [Gadsden, Ala.] *and* INTERNATIONAL BROTHERHOOD OF BLACKSMITHS, DROP FORGERS & HELPERS, LOCAL 633 (AFL), INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS OF AMERICA, LOCAL B-136 (AFL), and INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL 1301 (AFL). Case No. 111-15577-D, Aug. 8, 1945.

CONTRACTS — Reopening — Mutual consent—Discussion between parties

Dispute of parties over shift differentials is not properly before Board

since parties' contract, which provides for opening only by mutual consent, has not been properly opened, despite contentions of union that company in effect agreed to opening by engaging in negotiations and by agreeing that disputed issue was "night-shift differentials."

For other rulings see Index-Digest 37.370 in this or other volumes.

Majority decision of Regional Board IV (Atlanta) acting on report of panel. Public members concurring: M. T. Van Hecke and Harry D. Wolf. Employer members concurring: Harry P. Leu and Fritz Rayfield. Labor members dissenting with opinion: William M. Alexander and Frank McCallister.

Directive Order

I. The Regional War Labor Board for the Fourth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

Shift Differentials

The Board finds that the issue of shift differentials is not properly before it.

II. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect 14 days from the mailing date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Dissenting Opinion of Labor Members

SHIFT DIFFERENTIALS

ALEXANDER and MCALLISTER, Labor Members:—The labor members of the Board dissent on the Board's findings in the above styled case in which they held that the issue of shift differentials was not properly before the Board. It is well in the outset to set out Sec. 16 of the agreement now in effect between the parties:

"This agreement shall be effective as of Sept. 13, 1942, and remain in effect for a period of one year and thereafter from year to year, subject to thirty (30) days' notice in writing before the expiration of any yearly period. However, this agreement may be opened at any time by mutual consent of both parties."

The last portion of the section, as above quoted, means exactly what it says, that the agreement may be opened at any time by mutual consent of both parties.

We find in the record of this case that the company was very receptive to the opening of this contract and that it [showed this] by telephone, correspondence by letters, by negotiations, by personal contact, proposals and counterproposals; last and most important of all was the calling of a labor conciliator to either settle the dispute or else certify the same to this Board. The company could have, if they so desired, refused to entertain any letter, telephone call, or personal contact by relying on the last portion of Sec. 16 of the agreement, but they did not do this, and they state that on Feb. 15, 1945, they received a letter from the representative of the union stating that they would like to enter negotiations with the company in regard to a four- and six-cent shift differential. The company further states that the union subsequently telephoned and stated that it was withdrawing its request. Thereupon the company requested that the union indicate in writing that it had withdrawn its request.

To again impress upon you how receptive the company was, we find that ten days later on Apr. 2, 1945, the company again wrote the union. We again find on Apr. 5, 1945, that representatives of the unions met with the company representative. All of this is set out to indicate the receptive mood of the company when, if they had not desired to reopen the con-

tract, they could have held their ground on the mutual consent portion in the last paragraph of Sec. 16.

We again find on Apr. 9 a joint conference with representatives of three unions, the company and the commissioner of conciliation. We again find on Apr. 25, 1945, during a joint conference, the parties signed a statement which is marked Exhibit "A" in the company brief. The statement in the form of a letter included the following pertinent sentences.

"Mr. Pierce, the commissioner of conciliation, was unable to get the interested parties together in a mutual agreement; therefore, still at issue is the matter of night-shift differential at the company's Gadsden, Ala., plant. Therefore, the parties agreed the only remaining issue is the question of night-shift differential."

We frankly ask the question, what else could the company have done to signify their desire to consent to the reopening of the agreement?

When we [consider] the acts above mentioned on the part of the company the question arises in our minds, why was the company so receptive? A study of the file will answer that question.

It is to be noted that for some time a shift differential of ten and six cents per hour for the fixed-shift employees has prevailed in this plant. The idea of the company was to "horse trade" and to cut down, if possible, this ten- and six-cent shift differential, and they so proposed to the representatives of the union. After finding that the representatives of the unions involved in the [question of] ten- and six-cent differentials would not agree, the company now insists that they never mutually consented to reopening the agreement. Such a mockery on contractual labor relations!

It is quite clear to the dissentors that the rule of estoppel should apply in full force to this case, and the company under that rule should be prevented from alleging or denying a fact in consequence of its own previous act. We respectfully insist that by the acts of both parties the contract was opened by mutual consent and that the parties consented, had conferences and negotiations on the question of shift differentials.

A special reference is again made to the stipulation entered into before the commissioner of conciliation between the company and the union dated Apr. 25, 1945:

"That the only remaining issue is a question of night-shift differentials."

It is clear that the agreement was opened, and, due to the opening, an issue was raised on shift differentials. The company should not blow hot and cold.

We are agreed that the directive order in this case violates all principles of collective bargaining, negotiations, and the peaceful settling of labor disputes.

Report and Recommendations of the Panel

June 15, 1945

At the oral hearing before a tripartite panel on June 15, 1945, in Birmingham, Ala., all parties involved in this case had a full opportunity to present oral evidence and arguments on the issue in dispute. The case was certified to the Board on May 7, 1945, by the Conciliation Service of the Department of Labor. Approximately 1,000 employees of the company are involved in the dispute.

THE PARTIES

The Lansdowne Steel & Iron Company is a corporation organized under the laws of the State of Pennsylvania. It operates the plant at Gadsden, Ala. for the Ordnance Department of the United States Government. The name of the facility being operated by this company is the Gadsden ordnance plant. It produces at this plant 105 mm. artillery shells and is therefore engaged exclusively in war work. The unions are exclusive bargaining agents as to rates, hours of work, and working conditions for certain employees of the company at the Gadsden plant.

The agreement with the Lansdowne Steel and Iron Co. is a metal trades agreement, applying to the three organizations, namely, International Association of Machinists, Local 1301, Int. Brotherhood of Electrical Workers, Local B, 136, and the International Brotherhood of Blacksmiths Drop Forgers and Helpers, Local 633. There are approximately 1,000 members of these unions involved in this dispute.

BACKGROUND

On May 7 a dispute was certified by the U. S. Conciliation Service to the National War Labor Board. The question was duly referred to the Fourth Regional War Labor Board and by that Board referred to this panel for the purpose of determining the question of "night-shift differentials." The parties had so stipulated in a

joint letter to Mr. Wm. S. Pierce, commissioner of Conciliation Service, U. S. Department of Labor, Birmingham, on Apr. 25, 1945. On Sept. 13, 1942, the parties executed an agreement. That agreement was amended on May 27, 1943 and is a metal trades dep't. AFL agreement applying to the three organizations. This agreement is still in effect. Relations between the parties have been pleasant and friendly.

NIGHT-SHIFT DIFFERENTIALS

The union requested in March 1943 that the company agree to sign [a] joint petition to the Board so that all employees working on revolving shifts be paid a differential of four cents per hour for the second shift and six cents per hour for the third shift above the base pay rate and that the differentials now in force under the terms of the contract of 10 cents per hour for all employees regularly assigned on second and third shifts whose rate is 72 cents per hour or more and of 6 cents per hour or where the rate is less than 72 cents per hour be retained. It appears that, during the discussions prior to the panel hearing and during the course of the hearing, the company did not deny that the employees involved should be paid the shift differential. However, the company took the position that it was against the policy of the company to have more than 1 rate, and the dispute came about through the desire of the company to reduce the 10-cent second- and third-shift differential now paid the approximately 60 employees in the machine shops and maintenance groups who regularly worked these shifts if the shift differentials of 4 cents and 6 cents for all second- and third-shift rotating employees not now receiving shift differentials were agreed to. The company and the unions agreed after several meetings that agreements could not be reached satisfactorily, and the U. S. Conciliation Service was asked to come in in an effort to settle the issue. After two meetings, the issue could not be settled, and a joint letter was signed by all parties agreeing that the matter of "night-shift differentials" of the company's Gadsden, Ala., plant was still at issue. (See letter dated Apr. 25, 1945.)

Union's Position

Approximately 60 employees in the machine shop and maintenance group work the second and third shifts respectively regularly. They do not rotate. Since Sept. 13, 1942, these employees, as a result of collective bargaining between all the parties, have received a ten-cent per hour differential above the rates established in the before referred to agreement for the classifications in the machine shop and maintenance groups for second- and third-shift work. Since that condition of employment was established through collective bargaining and has prevailed for more than two years and eight months and since the employees affected regularly work the second and/or third shifts and are not on rotating shifts, conditions should not be disturbed and should be continued in effect.

The unions request differentials of four and six cents per hour for rotating-shift employees. The employees involved are not employed on a necessarily continuous operation. The Board has already determined that night-shift premiums are not unstabilizing and that the onerousness, extra costs of second- and third-shift work and the interruption of normal living and of social life warrants second- and third-shift premiums of four and six cents per hour.

Company's Position

The company [relied on], at the beginning of the year and also in their brief quoting Sec. 16 of the present contract, a provision of that contract that the agreement may be opened at any time by mutual consent of the parties. The company further contended that the parties have not entered into an agreement by mutual consent and, therefore, that there is no issue beween the parties and there can be none until the contract expires on Sept. 13, 1945. The company further raised the question of whether the single issue in this case is properly before the Board. The company contended that they entered into discussions and were still willing to discuss an amendment to the contract, but they did not consider their contract was opened. It was stated by the company representatives at the hearing that mutual consent of the parties for an amendment to the contract had not been given, and the company took the position that the provisions of the contract must govern so long as it is in effect.

Findings of Fact

The dispute arises out of the fact that the company in its discussions

with the unions appeared to be willing to amend Sec. 4 of the agreement between the parties. Sec. 4 of the said agreement between the parties provides:

"The employees regularly assigned on second and third shifts shall receive above the rates established herein for each classification ten cents per hour if their rate is 72 cents or more and six cents per hour if their rate is less than 72 cents. Shifts rotating will not receive this differential."

But the company would not agree to the changes as requested by the unions unless the company was allowed to reduce the 10-cent second- and third-shift differentials now being paid to approximately 60 employees who are assigned regularly to the second and third shifts. When agreement could not be reached, all parties signed the letter to Mr. Pierce of the U. S. Conciliation Service, agreeing that the only remaining issue was a question of "night-shift differentials." Much time was spent during the early course of the hearing to determine whether the parties had not entered into an agreement by mutual consent and that, therefore, there is no issue between the parties and that there can be none until the contract expires on Sept. 13, 1945. The unions considered that the bargaining relation with reference to shift differentials was construed as a matter of mutual consent in modifying the existing agreement. The company took the opposite construction of the matter and, further, that the contract was not open.

DISCUSSION AND RECOMMENDATION

As the panel had no information other than that the issue of "night-shift differentials" had been properly placed before the Board, it was difficult for the panel to decide, except from the letter addressed to Commissioner Pierce dated Apr. 25, 1945, whether or not the issue was properly before the Board. It was agreed by all members of the panel that, if the Board decided that the issue of night-shift differentials was properly before the Board by the Board ruling that the letter to Commissioner Pierce placed the issue of night-shift differentials as the only issue before the Board, it would recommend as follows: That, subject to determination as to whether or not the issue is properly before the Board, the dispute be resolved in favor of the union's request for four-cent and six-cent shift differentials for work performed in the second and third rotating shifts without discontinuance of the existing shift differentials paid to fixed-shift workers.

Signed by John E. Bryan, representing the public; George C. McCullough, representing employees; and Julian C. Harper, representing labor.

TIDEWATER ASSOCIATED OIL CO.—

Decision of Regional Board VIII (Dallas)

In re TIDEWATER ASSOCIATED OIL COMPANY [Tulsa, Okla.] *and* OIL WORKERS INTERNATIONAL UNION, LOCAL 280 (CIO). Case No. 111-15584-JB [8-D-462], July 26, 1945.

PREMIUM WAGE RATES—Shift premiums—Compensation for nightwork included in basic pay

Rotating-shift workers are not entitled for late-shift bonus. Compensation for late-shift work is deemed to have been included in basic wage rate, where, among other things, (1) average rate of shift workers is 12.3 cents higher than average rate of day workers, (2) night-shift bonuses are contrary to industry-area practice, and (3) company's rates are at or above minimum going rates.

For other rulings see Index-Digest 140.575 in this or other volumes.

Majority decision of Regional Board VIII (Dallas). Opinion by A. Langley Coffey, chairman. Public member concurring: Guy L. Horton. Employer members dissenting on Part I, Sec. 1: Herbert A. Burow and Eugene H. Morter. Labor members dissenting with opinion on Part I, Sec. 2: R. E. Curtis and M. M. McKnight (opinion by Mr. Curtis and R. B. James).

Directive Order

I. The Regional War Labor Board for the Eighth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive

Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

Sec. 1. Union Security

The Board orders and directs that the following provision shall be incorporated in the contract between the parties, in so far as the issue of union security is concerned.

"(a) All employees who on Aug. 23, 1945, are members of the Union in good standing in accordance with its constitution and by-laws and all employees who become members after that date, shall, as a condition of employment, maintain their membership in the Union in good standing for the duration of the collective agreement in which this provision is incorporated or until further order of the Board.

"The Union shall, immediately after the aforesaid date, furnish the Regional War Labor Board with a notarized list of its members in good standing as of that date.

"The Union, its officers, and members shall not intimidate or coerce employees into joining the Union or continuing their membership therein.

"Neither shall the employer intimidate or coerce employees into withdrawing from or refraining from joining the Union.

"The final decision and determination as to whether any member of the Union shall withdraw from union membership during the 15-day period herein provided, shall be the sole decision and determination of that member. Any member may record his decision to withdraw from the Union by giving written notice to the Union, the Company, and the Regional War Labor Board before the 15-day period expires. Receipt of such notice by the Regional Board shall be considered prima facie evidence of the employee's decision.

"(b) If a dispute arises as to whether an employee (1) was a member of the Union on the date specified above or (2) was intimidated or coerced during the 15-day escape period into joining the Union or continuing his membership therein, such dispute may be submitted for determination by an arbitrator to be appointed by the Regional War Labor Board. The decision of the arbitrator shall be final and binding upon the parties."

"(c) If a dispute arises as to whether an employee (1) has failed to maintain his membership in the Union in good standing after the aforesaid date or (2) was intimidated or coerced into joining the Union after the aforesaid date, such dispute may be submitted for determination by an arbitrator to be selected in the manner provided by the contract of the parties or, if no such provision exists, to be selected by special agreement. In the absence of such a contract provision or special agreement, the arbitrator will be selected by the Regional War Labor Board on due application. The decision of the arbitrator shall be final and binding upon the parties."

Any party desiring to post or otherwise publish an official explanation by the National War Labor Board of the foregoing maintenance-of-membership provision may use the [standard] form of notice [and] procedure to be followed in administering the maintenance-of-membership provision in the absence of some other procedure agreed to by the parties [12 War Lab. Rep. XXVIII; WCDS 321].

Sec. 2. Shift Differential

The request of the union that the company be ordered and directed to place in force and effect a five-cent (5¢) per hour differential for second-shift operations and a ten-cent (10¢) per hour differential for third-shift operations is hereby denied.

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed hereby, as ordered by the National War Labor Board.

The effective date of such agreement shall be May 1, 1945, such date being the effective date of the presently existing jointly executed partial contract between the parties, or any other such date as the parties may mutually agree upon.

The termination date of such agreement shall be Apr. 30, 1946, such date being one year from the effective date as shown above or in accordance with the termination provisions of the presently existing jointly executed partial contract between the parties, or any other such date as the parties may mutually agree upon.

III. This order shall stand confirmed as the order of the National War Labor

Board and, unless otherwise directed by the National War Labor Board, shall take effect fourteen (14) days from the date of mailing hereof, such date of mailing being Aug. 8, 1945, unless in the meantime a petition for review is filed with the Eighth Regional War Labor Board pursuant to the accompanying appeals procedure, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree. However, the date of expiration of the escape period provided in Sec. 1, Par I above shall not be affected by the filing of a petition for review of that provision or any other provision of this order.

IV. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the Eighth Regional War Labor Board seeking review of portions of this order, either party may request the Eighth Regional War Labor Board to make the remaining portions of the order immediately effective.

Opinion of the Board

Aug. 6, 1945

COFFEY, Chairman:—The parties to this dispute are the Tidewater Associated Oil Company, a corporation organized under the laws of the State of Delaware, and the Oil Workers International Union, Locals 330 and 280 (CIO). The company is engaged in the production, refining and marketing of petroleum and its products. The units involved in this case are the Drumright, Okla., refinery and the crude producing operations in the states of Oklahoma and Kansas. Locals No. 330 and 280 of the Oil Workers International Union (CIO), were certified by the National Labor Relations Board on Mar. 8, 1945, as the exclusive bargaining agent for the 255 employees in the bargaining unit. The parties have agreed on the terms of a contract except maintenance of membership and differentials in pay for nightwork. The disputed issues were submitted by written briefs and the parties stipulated that the issues should be decided by a hearing officer on the basis of the briefs submitted.

The hearing officer recommended that the standard maintenance-of-membership clause be included in the agreement between the parties and that the union's request for a night-shift differential be denied. The Board, with industry dissenting on maintenance of membership, and labor dissenting on the night-shift differential, adopted the hearing officer's recommendation. An opinion is to be filed by labor in support of its dissent, and this opinion is written supporting the action of the Board on night-shift differential.

NIGHT-SHIFT DIFFERENTIAL

The stilling unit and equipment auxiliary operations in this plant are continuous with the operating employees working rotating shifts. Employees in classifications on continuous operations are called "shift workers." Maintenance and repair work and some operations are carried on normally during the regular daylight workday. Employees on these assignments are known as dayworkers.

The Board found, from the facts in the case, "that compensation for late-shift workers is already included in the basic wage rate of the subject employees." *

The Board's decision is based on the evidence that the weighted average rates paid all employees on shift operations is 12.3 cents higher than the average paid straight dayworkers; that the hourly rates of pay of all employees on shift operations with the exception of light oil treater helper and boilerhouse helpers † are at the minimum of the brackets or better. Of forty-seven (47) hourly rated jobs, twenty-five (25) are at the maximum of the brackets or better. The Board

* ED. NOTE: The majority in this case issued a "Finding of Fact," dated July 25, 1945, which reads as follows:

"The Regional War Labor Board for the Eighth Region, after having duly examined and considered the report of the hearing officer and the briefs and comments presented by the respective parties and acting pursuant to the direction of the National War Labor Board, as reflected in its instructions as to fringe adjustments [23 War Lab. Rep., No. 4, V] that this Board make a specific finding in writing as to whether or not compensation for nightwork is included in the company's present wage structure, finds and concludes as follows:

"That compensation for late-shift workers is already included in the basic wage rate of the subject employees."

Signed by A. Langley Coffey and Guy L. Horton, public members; and Herbert A. Burow and Eugene H. Morter, employer members. R. E. Curtis and M. M. McKnight, labor members, dissented.

† An application to increase the rates for these two jobs to the minimum of the brackets eliminates this exception.

further found that, historically in the petroleum refining industry, employees on shift operations have always worked one-third of the time on the evening shift and one-third of the time on the midnight shift with the attendant inconvenience of nightwork. The fact that this is historically true and no bonus for nightwork has been paid separate and apart from the hourly rates of pay is a circumstance that the inconvenience of nightwork has already been taken into account as one of the factors in establishing the hourly rates of pay. This would seem to be particularly true in those cases where the refinery's rates of pay are at the minimum of the brackets or better. Support for this view is found in a Bureau of Labor Statistics survey for petroleum refining in the state of Oklahoma, the site of this company's principal operations, covering twenty-two (22) establishments employing 5,110 persons. The survey shows twenty-one (21) companies operating three (3) shifts, seventeen (17) companies with, and five (5) without, periodic rotating of shifts, and none of the companies pay a shift differential separate and apart from the basic rates of pay.

The Board further considered the comparison in the rates of pay between the helper classifications on shift and daywork as significant. It is shown that employees are drawn out of the labor gang to fill the helper or starting positions on shift work and day operations and that no particular training or skill is required for promotion to either group: that the helper classification is the trainee classification whether for mechanical day operations or shift operations. There exists an 11.2-cent pay differential in favor of employees doing nightwork in the helper classification over those doing comparable daywork.

The union makes a point that maintenance employees who work the night shift receive the same rate of pay for the same classified work as the maintenance employees who work straight daylight shifts. It admits that most of the maintenance crews in the refinery work during the day shift with only a few assigned to nightwork. It says that the shift rotation plan is not customary among maintenance employees. On these general allegations, unsupported by factual presentation, it asserts that this is proof that a shift differential has not been given consideration in establishing rates in this plant. It occurs to the public members of the Board that the union could have shown the job classifications involved, the job content, number of employees affected, rates of pay, which shifts rotate and which do not, and such other facts which would have shown an inequity to exist in the maintenance jobs. If such evidence had been presented and had borne out the union's contention, then a shift differential should have been granted for employees on those jobs, in the absence of a showing by the company that other circumstances existed to offset the recognized equity in favor of compensation for the extra burden of nightwork. Without such facts we can only accept this as a circumstance in favor of the union's claim as we do those specific examples of the employer having used regular day welders to do night welding and employees in the loading department for nightwork without additional compensation. At this point we wish to make it clear that, in our thinking there is a distinction to be made be- ployer must use dayworkers for nightwork on shifts and premium pay for work outside an employee's regularly scheduled hours of work. If an employer must use day workers for nightwork in cases of emergency and to meet production schedules, the inconvenience of nightwork is not to be compensated for by payment of a shift differential, but provision should be made for premium pay for employees working outside their regularly scheduled hours of employment. Such provision is made in the contract between the parties to this dispute, and we believe now covers the situation where day welders or other dayworkers are called upon to do nightwork.

The contention of the union that certain employees in the production department have worked several years at nightwork with no added compensation therefor is offset by the company's showing that there exists a substantial difference in job content which favors nightwork over daywork in the same job classifications.

Weighing all the facts in the case and considering all the circumstances, the public members of this Board found that the union has failed to establish its claim for a night-shift differential.

Dissenting Opinion of Labor Members

Aug. 2, 1945

NIGHT SHIFT DIFFERENTIAL

CURTIS and JAMES, Labor Members:—The labor members of the Eighth Regional War Labor Board respectfully dissent from the majority ruling on the issue of shift differential for the following reasons.

There was no showing, in our opinion, made by the company that a shift allowance had been taken into account in the established rates. To the contrary, the union offered evidence to show that employees in the same classification doing the same kind of work on the night shifts receive the same pay as other employees on a straight day shift. Exhibits "A" and "B" submitted by the company do not, in our opinion, have any bearing on whether or not the company, in setting up the basic rates of pay, took into consideration the nightwork and made allowances for such.

We think that the union's position, as set out in union's brief, fully justifies the position of the union that a shift differential should be ordered in this case. We call particular attention to the following quotation from the union's brief.

"It is perfectly clear from an examination of the rate histories in the petroleum industry that the night-shift factor, rotating or otherwise, was never taken into account or included in the fixing of rates for oil workers. This conclusion is clearly indicated by two factors. In the first place, the rates were initially established at a long time prior to the organization of the workers into any trade unions. The rates were unilaterally fixed by the employers, and there has been no revamping of rate schedules to conform to any special factor.

"Even more significant, however, is a second fact. The operation of individual plants or portions of plants at various times and in varying periods on a single shift or a straight shift basis has never resulted in any alteration in the wage rates. In other words, rotation and nonrotation of shifts have never, in the history of the petroleum industry, affected the question of rates of the men involved. This is particularly true with the company in this case. During the entire year of 1942, and a large part of the years of 1943 and 1944, regular daylight workers in the welding shop were assigned to night welding and the company payroll record will show that neither the welders or their helpers received any additional compensation for the same type of work because of changing from daylight to nightwork.

"The same practice was employed in the loading department when loading was being done at night. Certain employees in the production department have worked several years at nightwork with no increased rates. Mr. Manning, a pumper, has worked on the midnight shift for 10 or 12 years without changing to daywork. There has been no increase in pay for any of the above mentioned employees for doing the same work at night that other employees perform in daylight hours.

"Therefore, it cannot be said that when this company established rates for all of the various classifications of work that they provided for an employee who was required to work at night by placing him on a job that paid a higher rate than the average daylight job pays. It is perfectly clear then that the rates have not been in any way determined or affected by the element of shift rotation.

"This is precisely analogous to the situation which was before the Board in the matter of Globe Steel Company, Case No. 111-849-D, 14 War Lab. Rep. 83, Feb. 14, 1944, where the Board stated:

"In the absence of evidence, one cannot assume that the jobs are properly evaluated to provide a balanced internal wage rate structure when men who worked two-thirds of the time at night are paid the same rates as others who do the same or similar work on a regular day shift. Nor is it possible, in the absence of evidence, to presume that the Globe rates have been worked out on a basis which can be said to take proper account of the nightwork factor."

The company did not refute or attempt to refute this statement of the union. In our opinion, the company in this case has simply made a statement to the effect that the nightwork involved in a rotating shift was taken into consideration in establishing the basic rates of pay. It is our opinion that the burden of proof in this matter is on the company to prove by a preponderance of the evidence that they have "given consideration to nightwork in establishing the basic rates."

The record in this case shows that the company failed to establish this to any degree. On the other hand, the

union proved by a preponderance of the evidence that the company did not take nightwork into consideration in establishing the basic rates of pay.

We further specifically call the attention of the Board to the "finding of fact," to which we dissent, as required by NWLB instructions. This is not a statement of a finding of fact as required by the instructions. Rather it is a statement of the action of the Board in this case, without any reason as to why the Board denied a shift differential.

In dissenting, we contend that there is no justifiable basis on which this shift basis could be denied as is evidenced in the future to justify the denial by a proper finding of fact as required by the instructions.

We also wish to note that the Regional Boards at Kansas City and Chicago have granted such rotating-shift differentials at the Root Petroleum Refinery, El Dorado, Ark., and the Texas Company Refinery at Lawrenceville, Ill., respectively. These two decisions followed the pattern as established by the National Board in the Basic Steel decision [19 War Lab. Rep. 568], which decision conforms to the facts in the case under consideration.

The labor members respectfully submit, in light of the evidence in this case, that the Regional Board's decision should be reversed and respectfully request the National Board to order a shift differential of four cents for the second shift and six cents for the third shift, which is within the stabilized limits.

EMPLOYERS ASSN. OF SOUTHERN NEVADA—

Decision of Regional Board X (San Francisco)

In re EMPLOYERS ASSOCIATION OF SOUTHERN NEVADA [Las Vegas, Nev.] *and* AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 457 (AFL). Case No. 111-13026 [10-D-794], July 17, 1945.

HOURS OF WORK — Reduction in workweek — Retention of wage level

Retail meat shops should reduce straight-time workweek of butchers from 54 to 48 hours without reduction in pay where Board finds that employees perform no useful work during one hour's time they are required to spend on premises before and after opening and closing hours, respectively, and actual hours and actual amount of work performed will, therefore, remain unchanged.

For other rulings see Index-Digest 65.515 and 225.968 in this or other volumes.

Majority decision of Regional Board X (San Francisco). Opinion by A. P. Allen, public member. Public member concurring: James C. Hill. Employer members dissenting with opinion on Secs. B and F: R. A. Smardon, Jr., Paul Shoup, and George O. Bahrs. Labor members dissenting on Secs. C, D, and E: Wendell Phillips and Harry Lea.

Directive Order

I. The Regional War Labor Board for the Tenth Region, acting as the duly authorized agent of the National War Labor Board, in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

A. Vacations

The following agreed upon clause shall be included in the agreement to be signed by the parties:

"Employees shall have one (1) week's paid vacation after one year's service and two (2) weeks' paid vacation after five (5) years' service, such vacation shall be paid at straight-time rates. The number of hours for which employees shall be paid for a vacation week shall be the average number of scheduled weekly hours during 12 pay periods immediately preceding the beginning of the vacation period."

B. Hours of Work for Retail Employees

The regular workweek for butchers in these retail establishments shall consist of forty-eight (48) hours from 9:00 a.m. to 6:00 p.m., Monday through Saturday, inclusive, with one uninterrupted hour each day as a lunch period. Overtime at time and one-half computed on the basis of a forty-eight

(48) hour week shall be paid for work done after forty-eight (48) hours in any one week or for work done before 9:00 a.m. or after 6:00 p.m. on any one day. Present wage scales shall remain unchanged.

C. Hours of Work for Wholesale, Jobbing, and Restaurant Supply Employees

The existing provisions of the contract governing the hours of wholesale, jobbing, and restaurant supply employees shall be continued.

D. Classification and Wage Scale for Butcherette

The classification "butcherette" shall be established with the following scale of pay:

Classification	Wkly. Rate
1st 3 Mos.	$30.00
4th and 5th Mos.	31.50
6th and 7th Mos.	33.50
8th Mo. and Thereafter	35.00

Employees in this classification shall be restricted to the duties of wrapping, plattering, and waiting on counter.

Women presently employed as apprentices at wage rates above the scale for butcherettes shall not be transferred without their consent to the classification of "butcherette."

The existing provisions of the contract relating to opening and closing hours of market shall remain unchanged.

F. Effective Date

The foregoing provisions shall be effective as of Nov. 30, 1944, the expiration date of the contract unless the parties agree upon a later date, with the exception of the provision relating to the reduction of hours for butchers which shall be effective as of the date of issuance of this order.

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the Regional War Labor Board.

III. Pursuant to Executive Orders 9250 and 9328, as supplemented by the directives of May 12, 1943, and of Mar. 8, 1945, the terms and conditions of this order in any case where price relief is requested (or where notice is given that appreciable increases will result in the cost of production of items not subject to price ceilings and sold to government procurement agencies) shall be placed in operation only upon a determining by the Office of Price Administration (or by the appropriate procurement agency) that these adjustments will not require any change in price ceilings (or any appreciable increase in production costs) or, if no such determination is made, then only upon approval by the Director of Economic Stabilization. The parties will be notified promptly of the action of the Office of Price Administration or of the procurement agency or of the Director of Economic Stabilization.

IV. The provisions of this order shall become operative as the order of the National War Labor Board fourteen (14) days after the date of issuance, unless within such fourteen (14) days either party files a petition for National Board review of the order with the Tenth Regional War Labor Board in the manner prescribed in the "Summary of Procedures."

Either party may petition the Regional Board to make effective immediately according to its terms those provisions of the directive order on which review has not been sought or the parties may mutually agree upon the date when the order or any part thereof shall take effect, except that where a wage or salary adjustment is made subject to the approval of the Director of Economic Stabilization, the parties may not by their agreement make such adjustment effective prior to the date of such approval. Notwithstanding any other provision of this paragraph, that part of a directive order which continues in effect the terms and conditions of a prior contract which has expired or been otherwise terminated shall not be suspended or stayed by the filing of a petition for review but shall become effective according to its terms unless and until the National Board, upon consideration of a petition for review, otherwise directs.

Either party may, within seven (7) days of the date of issuance of the directive order, file with the Regional Board, in accordance with the "Summary of Procedures," a petition for Regional reconsideration. The filing of such a petition shall not, unless the Regional Board otherwise directs, stay or suspend the operation of the order nor shall it extend the time within which a party may petition for review.

Opinion of the Board

July 19, 1945

WORKWEEK

ALLEN, Public Member:—This case concerns a dispute between a group of 11 employers and the butcher's union in the town of Las Vegas, Nev. One of the issues in the case and the only one which will be discussed in this opinion was the request by the union for a reduction in the number of hours worked per week from 54 to 48 without reduction in the weekly rate of pay. Following are the pertinent facts as presented by the panel report and recommendations:

Since Nov. 30, 1942, when the parties entered into their first contract, the compensation of practically all employees has been on a weekly basis; journeymen butchers, for instance, receiving $55.00 for a 54-hour straight-time workweek. Working hours were specified in the contract as nine hours between 8:15 a.m. and 6:15 p.m. with one hour off for lunch. Time and one-half was provided for all work performed before or after those hours. Just prior to Nov. 30, 1942, the employers engaged in retailing meat agreed to change the hours during which meat was sold to the public from those above mentioned to 9 a.m. and 6 p.m. respectively. Thus, the employees, with the exception of certain female workers who are restricted to 48 hours by state law, were required to be at their working places 45 minutes before the stores opened in the morning and 15 minutes after they closed at night. Previously, the working hours for men had coincided with the opening and closing hours. All other stores in the area pay overtime after 48 hours.

After a hearing in the case, the panel found that the ninth hour during which the stores are not open to the public "has been in fact an idle hour," in which the butchers do no useful work that cannot be done between 9 a.m. and 6 p.m. From this premise the panel reasons that the proposed reduction in hours without an accompanying reduction in pay will not be inflationary, since (1) the pay per hour actually worked will remain unchanged and (2) because the employers will receive the same actual week's work that was contracted for in November 1942 and has been received since; i.e. the sale of meat during all hours during which the stores are open.

Nothing has been advanced which would lead us to question the panel's finding of fact. On the contrary, it would seem quite likely that, during the past 2½ years and for some time in the future, the reduction in store hours would not lead to a reduction in total sales but merely result in concentrating the same amount of work into a shorter period. Accepting, therefore, as we must, the finding of fact, we believe the panel's conclusions to be inescapable. Since the panel finds that the butcher trade alone in the Las Vegas area works 54 hours per week at straight time, the decision can hardly be considered as unstabilizing to the area. Neither should it have any effect upon working conditions elsewhere, since Las Vegas is separated from any other town of over 5,000 population by over 150 miles of desert.

We should like, however, to emphasize that our action in this case is based solely upon the facts as above stated. We do not believe there is involved any inconsistency with the Board's action in the Reno and Sparks case * as explained in the opinion of Public Member Arthur C. Miller, since there was in that matter no such finding of fact as was presented by the panel's report in the instant case.

Dissenting Opinion of Employer Members

WORKWEEK

SMARDON, SHOUP, and BAHRS, Employer Members:—This is a dissent by industry members from the action of the labor and public members in ordering a reduction in hours worked per week from 54 to 48 without a corresponding reduction in the weekly rate of pay.

In our opinion, decreasing hours and maintaining the same total pay is an increase in the rate of pay which should be processed under established wage stabilization principles.

It would appear the public members concede that a reduction in pay should normally accompany a reduction in hours, but rest their case on the statement that, because the butcher shop is only open to the public for eight hours, there is an idle hour in which the butchers do no useful work. In our judgment, such an assumption is presumptuous in view of the employer's statement that the employees are needed before and after selling hours to prepare meat for the day's selling and to clean up.

* Case No. 111-8880 (10-D-554) [21 War Lab. Rep. 308].

If the War Labor Board is to set itself up as a judge with power to determine whether or not an employee is or is not performing useful work, what tests are going to be applied? Where can such a theory be stopped? What is to prevent the Board from telling the employer that his employees should perform the work in 24 hours instead of 48 and that there are 30 instead of 6 "idle" hours? It appears to the industry members that the public and labor members of the Tenth Regional War Labor Board have again embarked upon an unorthodox tangent which, if permitted to stand as a precedent, will lead to a wilderness of confusion and more disputes.

Direction of the working force is an exclusive management function. As a matter of fact, it is management's principal function. Hundreds of considerations prompt management in its utilization of the working force. The War Labor Board is no more qualified to tell management how it should utilize workers' time than it is to tell a worker he is not working hard enough and should devote more energy to his job.

The majority argument that the decision will not be unstabilizing because Las Vegas is in the middle of the desert is not sound. A desert location should not affect the application of wage stabilization principles. The law should be administered uniformly regardless of the location of the town or the individual.

CARTER CARBURETOR CORP.—

Decision of Regional Board VII (Kansas City)

In re CARTER CARBURETOR CORPORATION [St. Louis, Mo.] *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 819 (CIO). Case No. 111-14734-D, Aug. 1, 1945.

EMPLOYEES' BENEFITS—Sick leave plan—Modification by Board order—Sex differential

Existing sick leave plan should be modified to eliminate sex differential in rate of sick benefits since practice has no support in custom or reason. Decision constitutes adjustment in detail of plan to eliminate an inequity and, therefore, does not contravene WLB policy of not establishing or extending sick leave plans in dispute cases.

For other rulings see Index-Digest 49.800 in this or other volumes.

Majority decision of Regional Board VII (Kansas City). Opinion by Jack G. Day, chairman. Public member concurring: Robert A. Leflar. Labor members concurring: Hugh S. O'Neill and Irwin L. DeShetler. Employer members dissenting on Pars. 3 and 4: John P. Cooper and John E. Bogk.

Directive Order

The Regional War Labor Board for the Seventh Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Holiday Pay

The following provision shall be made a part of the agreement between the parties:

"In the event Executive Order 9240 [8 War Lab. Rep. XXVII; 26 War Lab. Rep., No. 3, IX; WCDS 20] is revoked during the life of this agreement, the said agreement may be reopened for negotiation at the request of either party on the question of offsetting premum pay on holidays worked against premium pay for hours in excess of eight (8) in any one workday or forty (40) in any one workweek."

2. Holidays As Days Worked in Computing Sixth- and Seventh-Day Overtime

The agreement between the parties shall contain the following provision:

"In the event Executive Order 9240 is revoked during the life of this agreement, the contract may be reopened for negotiations, at the request

of either party, on the question as to whether or not idle holidays shall be counted in computing overtime for sixth and seventh day worked in the regularly scheduled workweek.

3. Vacations

All employees, upon accumulating one year of service with the employer of at least one thousand (1,000) hours during the 12-month period immediately preceding June 1, 1945, shall receive a vacation of 1 week with pay based on forty (40) hours at straight-time rates. All employees upon accumulating five (5) years of service with the employer, who have worked at least one thousand (1,000) hours in the 12-month period immediately preceding June 1, 1945, shall receive a vacation of two (2) weeks with pay based on eighty (80) hours at straight-time rates. After becoming eligible for a vacation under the requirements set out above, the employee shall receive his vacation at any date thereafter that may be mutually agreed upon by the company and the employee.

It is further provided that in no instance shall an employee's vacation award be less than thirty-five dollars ($35.00).

4. Sick Benefits

The plan of sick benefits presently in effect shall be continued in all respects except that the differential between male and female employees shall be eliminated and the female employees shall receive the same rate of payment now accorded to the men.

5. Equal Pay For Equal Work

The agreement between the parties shall contain the following provision:

The principal of equal pay for equal work shall apply to the rates paid to male and female employees provided the operations so performed are comparable in quality and quantity of work on the same or similar operations.

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect fourteen (14) days from the date hereof unless, in the meantime, a petition for review by the National War Labor Board is filed with the Seventh Regional War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition for review by the National War Labor Board is filed wherein review of portions of this order is requested, either party may request the National War Labor Board to make the remaining portions of the order immediately effective.

As provided in Sec. 802.40 of the "Rules of Organization and Procedure of the National War Labor Board," this order is subject to review by the National War Labor Board at any time on its own motion.

Opinion of the Board

Aug. 1, 1945

SICK LEAVE

DAY, Chairman:—This opinion is directed to one of the several issues in the case. That one is the union request for an order eliminating the length-of-service element and the sex differential in the existing sick leave plan. The plan as set out in Art. VI, Sec. 6, of the contract between the parties provides:

"All hourly and piecework rated employees who, on the date of this agreement, have one year or more accumulated service and who have worked 1,000 hours or more in the 12 months immediately preceding the date of this agreement and all other hourly and piecework rated employees who, on the first day of any succeeding month during the term of this agreement, shall have accumulated one year or more of service and shall have worked 1,000 hours or more in the 12 months immediately preceding said first day of such month shall be entitled to sick benefits for any one or more but not exceeding 5 working days, Monday through Friday, during the term of this agreement as follows:

"One through five years' service, $2.50 per day for women employees and $3.00 per day for men employees;

"Six through nine years' service, $3.00 per day for women employees and $3.50 per day for men employees;

"Ten years' or more service, $3.50 per day for women employees and $4.00 per day for men employees.

"In order to receive the sick benefits hereinafter set forth, such employees shall furnish to the Company either a doctor's certificate of his or her illness or an affidavit in form furnished by the Company, sworn to before a notary public. If an affidavit is furnished, the Company's notary public will be available for such service without charge to the employees."

Length of service, either through an accident of custom or the sense of fitness of the parties, has long been a limitation on many types of working conditions. Sick leave belongs with such conditions. And, although the recognition of service in the plan before the Board is reflected in money rather than the number of allowable days, the money progression in this plan is no more than an adaptation of the common practice of service recognition* and will not be upset in the absence of compelling evidence indicating the necessity for change. In this case the evidence did not go beyond the showing of the condition and argument from it that the clause was discriminatory.

The union request for the elimination of the length-of-service condition is denied.

A different situation is presented by the demand for the elimination of the sex differential. It is clear from the terms of the plan that hourly rates and comparability of work have no bearing on the amount of sick pay received. The evidence is that the top pay is considerably under typical earnings for a normal day, and payments within the progression steps vary by sex not by rate.

The majority is aware of no custom or practice supporting the type of differential in this plan beyond the plan itself nor is there anything in the reasonableness of the differential to commend it. Accordingly, the union request is granted.

This action is taken with full cognizance of the fact that the National War Labor Board has generally declared its willingness to approve reasonable sick leave plans while declining to order their inauguration or extension.* However, the change ordered here amounts to no more than an adjustment in the detail of the plan to eliminate an inequity and does not abridge general policy.†

* For example, the report and recommendations of the panel in Tidewater Associated Oil Co., Case No. 111-5206-D, July 22, 1944, 17 War Lab. Rep. 775-778, indicates that the plan in effect provides: "The maximum disability allowance for employees with one year's service: two weeks' time at full pay and two weeks' time at half pay; and for employees with two or more years' service, two weeks' time at full pay and four weeks' time at half pay."

* General Motors Corp., Case No. 111-4665-D, Mar. 3, 1945, Press Release B-1691A [23 War Lab. Rep. 69].

Carnegie-Illinois Steel Corp. et al., Case No. 111-6230-D Nov. 25, 1944, Press Release B-1851 [19 War Lab. Rep. 568]. The denials included a statement of the policy with a characteristic limitation to the facts of the case.

† A parallel to the majority action is suggested by an examination of the National Board policy and practice with regard to incentive plans. Thus, the Board will approve incentive plans consonant with the wage stabilization program but will not order the installation of an incentive system. (Policy Resolutions No. 1 and No. 2 on Incentive Plans, dated Oct. 2, 1943 [11 War Lab. Rep. XXXIX].) This has not prevented the ordering of adjustments in a plan. See Cramp Shipbuilding Co., Case No. 111-8598-D, July 21 and Aug. 11, 1944, affirmed 23 War Lab. Rep. 76.

MARTIN BROS. BOX CO.—

Decision of Regional Board V (Cleveland)

In re MARTIN BROTHERS BOX COMPANY [Toledo, Ohio] *and* UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 784 (AFL). Case No. 111-1783-D [5-D-1327], Aug. 7, 1945.

WAGES — INCENTIVE WAGE SYSTEMS—Modification by Board order—Lowering of work standard

Present incentive plan should be modified (1) to pay standard rate of pay for 95 per cent of standard production rather than for 100 per cent of standard and (2) to grant five-cent increase to employees earning new standard rate or more, where only 30 per cent of employees receive earnings under incentive system. Although plan may have been properly timed for personnel employed several years ago, present work force, consisting largely of women, is unable to earn sufficient amount under present plan.

For other rulings see Index-Digest 260.270, 260.600, and 260.176 in this or other volumes.

Majority decision of Regional Board V (Cleveland) adopting recommendations of panel. Public members concurring: Frederick H. Bullen, Harry J. Dworkin, and A. C. Herold. Labor members concurring: J. W. Childs, Elmer Cope, and John Schmid. Employer members dissenting on Par. 1: Theodore A. Doan, Lloyd Haney, and Rudolf Homan.

Directive Order

I. The Regional War Labor Board for the Fifth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Wages

The company shall make the following adjustments in the wage structure for all jobs within the bargaining unit:

(a) An increase of five cents per hour in the base rates of incentive jobs and in the rates of all hourly rated jobs.

(b) The present standard rates shall be paid for 95 per cent of standard rather than 100 per cent of standard.

(c) An increase of five cents per hour in the standard rates of all employees who earn the new standard rate or more.

The company shall make known to each employee before noon of each workday the per cent of standard which he made on the previous day.

2. Effective Date

All wage adjustments ordered herein shall be retroactive to Dec. 12, 1944, the date of certification of this dispute, in accordance with the agreement of the parties set forth in Art. X of their contract signed Nov. 22, 1944.

The procedure to be followed in making the retroactive payment to those employees who have either quit or been discharged shall be in accordance with the National War Labor Board's resolution of Apr. 2, 1943 [26 War Lab. Rep. 3].

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

III. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect fifteen (15) days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

IV. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect except that where a wage or salary adjustment is made subject to the approval of the Economic Stabilization Director, the parties may not, by their agreement, make such adjustments effective prior to the date of such approval. In the event a petition is filed with the National War Labor Board seeking review of portions of the order, either party may request the Regional War Labor Board to make the remaining portions of the order effective immediately.

V. As required by Executive Orders No. 9250 and 9328, as supplemented by the directive of May 12, 1943, Par. 1 of this order shall in any event become effective only upon determination by the Office of Price Administration that the wage increases ordered in that paragraph will not require any change in price ceiling or, if no such determination is made, then upon approval by the Director of Economic Stabilization. The parties will be promptly notified of such action. As provided in Sec. 802.40 of the "Rules of Organization and Procedure" of the National War Labor Board, this order is subject to review by the National War Labor Board at any time, on its own motion.

VI. Item 2 of this directive order, establishing a retroactive date for any wage increases or adjustments granted, shall not operate to excuse failure to have secured approval for any wage increases or adjustments placed in effect prior to this order, where such adjustments required approval.

Report and Recommendations of the Panel

Apr. 26, 1945

PARTIES

The Martin Brothers Box Company is a company engaged in the manufacture of wooden wirebound and corrugated containers. It has two plants, one at Aurora, Ind., and the other at Toledo, Ohio. The principal office of the company is Toledo.

The Toledo plant is engaged in the manufacture of wooden and wirebound boxes. This wage dispute involves only the productive employees of the Toledo plant. The entire output of the Toledo plant goes into the war effort. Approximately 130 employees are involved in this dispute.

The union involved in this dispute is the United Brotherhood of Carpenters and Joiners of America, Local No. 784 (AFL). It has been the bargaining agent for the production employees in this plant for approximately ten years.

BACKGROUND

On Apr. 1, 1944, one month prior to the expiration of the contract, the union notified the company that it wished to amend their present agreement. In the attempt to negotiate a new contract, numerous meetings were held from the above date to Nov. 22, 1944, at which time the present contract, with the exception of the question of wages, was concluded and entered into. During the period of strong disagreement between the parties, the plant was shut down for approximately two weeks. With the aid of a commissioner of conciliation, the plant was reopened, and the matter of wages was certified to the WLB as an issue in dispute.

Informal hearings were held in Toledo, on Mar. 1, and 22, 1945, and all parties present were given an opportunity to hear, to be heard, and give evidence to support their respective positions; also to question and discuss oral testimony as well as information submitted in briefs.

ISSUE

Increase in Base Rates

Union's Position

It was the union's contention that the rates paid to the employees in this plant are below the sound and tested rates for the wooden box industry. It pointed out that many of the production workers were on piecework rates but that the timing of these jobs was so close that only a small fraction of the employees could make anything under the incentive system.

It further pointed out that scarcely an employee in the plant understood the operation of the incentive system because of its highly involved character. It claimed that, in the operation of this incentive system, rates that were made by an employee on one day might be lowered if he fell down in production the next day since it was the worker's average production figured on a weekly basis that determined his income under the incentive system. The union asks that the base rates in this plant be raised sufficiently to approximate the rates recognized by the War Labor Board and the Bureau of Labor Statistics for the wooden box industry and that this increase be reflected in the incentive rates.

Company's Position

At the outset of its argument, the company pointed out that, under the terms of the contract signed Nov. 22, 1944, the union was given the choice once during the term of the agreement to request either an increase in the present hourly rates or an increase in the piece time rates. The company offered the following paragraph from Art. 10 of the contract as evidence of its contention:

"The rate of compensation being paid employees covered by this agreement at the present time and paid since May 1, 1944, shall be conclusive and binding on the parties hereto. The present rates of pay shall be the same as paid since May 1, 1944. *The Union, however, reserves the right once during the term of this agreement to request an increase in the present hourly or piece time rates.*" (Italicized by panel.)

It was the contention of the company, in view of this contract provision, that the union would either have to base its claim for a wage increase on hourly rates or on piece time rates. It held that the union could not request increases in both hourly and piece time rates.

It further held that, since the union was making a request for an increase in base rates, a discussion of incentive rates at the hearing was out of place.

It further pointed out that the rates submitted by the union for the wooden box industry could not be applied to the rates in its plant, because its plant

was in the wirebound box industry and could not legitimately be classified as part of the wooden box industry. It offered figures to show that its rates were not out of line with the rates prevailing in the wirebound box industry. (Exhibit H.) It requests that the Board deny the union's request for any wage increase, in view of the above facts.

Discussion

Addressing itself to the company's contention that under the terms of the contract the union could not request increases for both hourly and piece time rates, the panel reached the conviction that whatever may have been written in the contract, the facts are that any adjustments in wages of this plant would have to take into account the whole wage structure. If the panel should recommend increases in the base rates without having those increases reflected in the incentive rates, then the whole incentive system would have been made practically inoperative. Thus, the panel dealing realistically with this dispute, denies the company's contention that, since the union requests an increase in the base rates, no consideration should be given to incentive rates. So far as the panel is concerned, since the question of wage increases has been raised by the union, the whole issue of wages is before it.

The panel likewise denies the contention of the company that rates established for the wooden box industry do not apply in the case of the wirebound box industry. In order to see clearly the issues in this dispute, the panel made an inspection tour of the plant. That inspection made unmistakably clear the fact that while there were certain operations in the manufacture of wirebound boxes which are peculiar to the wirebound box industry, a large percentage of the operations in this plant are identical with operations in the wooden box industry.

The operations which cut boards into various lengths for the manufacture of these boxes are more or less common to all wooden box factories. There were nailing machines in this plant which were identical with nailing machines in the wooden box industry. Furthermore, on its own letterhead, the company advertises that it is engaged in the manufacture of wooden boxes; wire-bound boxes represent only one of five kinds of containers manufactured by this company. These classifications are: Boxes, crates, wirebound boxes, corrugated boxes, and fibre. The panel therefore could not escape the conviction that, in so far as some classifications found in this plant were identical with classifications in the wooden box industry, therefore it was legitimate to compare the sound and tested rates for the wooden box industry with rates for similar classifications in this plant.

It was the judgment of the panel that the base rates for some classifications in this plant were below the sound and tested rates for those classifications in the wooden box industry.

Some comparable classifications follow:

Comparable Classifications	Rates In This Plant	Sound and Tested Rates Wooden Box Industry*
Cut Off Saw Operator	$ .70	$ .85
Rip Saw Operator	.70	.85
Off-Bearer Class A	.66	.72½
Off-Bearer Class B	.55	.65
Hand Nailing and Machine Nailing	.74½	.65
Car and Truck Loader	.73	.75

It will be seen from this comparison that the rates for these jobs are from 2 cents to 15 cents below the sound and tested rates for the wooden box industry. This in itself is indicative that some increases should be granted.

The panel found itself under the necessity of also examining the incentive rates for the simple reason that any increases in the base rates must be reflected in the incentive earnings or else it would tend to make them still more inoperative. Testimony was offered by the company at the hearing that only 30 per cent of the employees were making anything under incentive. Several years ago this was not the case. In the last three or four years, however, there has been a great change in operating personnel. Women are now doing work that formerly was done largely by men.

The panel discovered much objection to the incentive system as it now operates. It happens to be a highly involved system. It operates somewhat in this fashion: A standard of production is set up for the processing of the various items in the manufacture of boxes, including standards for putting

* The above sound and tested rates were arrived at by taking NWLB rates for the wooden box industry in Cleveland, approved Jan. 24, 1945, and adding five cents, which is the approximate differential between Cleveland and Toledo.

the boxes themselves together. These standards vary with the length, width, and thickness of the pieces used, the way the box is put together, the size and shape of the boxes, etc. It is not unusual for an employee in the course of a day's work to have been engaged in operations involving a dozen or more incentive rates.

It is easily understandable why the employees find it so hard to figure their daily earnings under the incentive system. It is not only highly involved but the company has adopted the practice of figuring the percentage of standard made by the employee on a weekly basis. Thus a gain made in a good day's operations may be reduced in order to bring up a poor day in the same week. This practice has led to considerable misunderstanding on the part of the employees.

The panel does not feel at liberty to recommend a different type of an incentive system but obviously certain changes should be made if good labor relations are to obtain in this plant.

In the first place, in the judgment of the panel, the jobs are timed too closely for the present personnel to make anything under the incentive system. They may have been timed properly for the employees who were working two or three years ago but the present force, largely composed of women, is not able to make much under the present system. When only 30 per cent make anything under incentive, something is wrong, and the blame cannot in all fairness be laid upon the employees.

The panel is of the opinion that the situation can be remedied in part at least by authorizing the incentive rate to become operative when the employee has made 95 per cent of standard instead of 100 per cent of standard. This would operate to put the marginal group who almost make standard over the top into the full incentive rate classification. To further encourage effort on the part of the employees, the panel feels that 5 cents should be added to the incentive rate for all who make 100 per cent or more of standard. Then, in order to preserve the existing differential, the panel feels further that the base rates in this plant should be raised 5 cents on the hour in order to make them approximate more closely to the sound and tested rates.

The panel points out that the company is now employing some 50 prisoners of war at a flat rate of 65 cents per hour, a considerable number of whom are working at jobs which, under sound and tested rates, they would have to pay 85 cents per hour. Several of these men are running cut-off and rip saws as well as band saws. A former German tank driver of the famous "Afrika Korps" is handling in an expert fashion an electrically driven truck.

In the light of the above considerations the panel feels that an increase should be allowed the employees in this plant.

Recommendations

The panel recommends that the Board approve:

(a) An increase of five cents per hour in the base rates and all hourly rated jobs.

(b) Authorize the present incentive rates to be paid to all making from 95 per cent to 100 per cent of standard.

(c) An increase of 5 cents in the incentive rates of all who make more than 100 per cent of standard.

(d) Direct the company to make known to each employee before noon of each workday the per cent of standard which he made on the previous day.

Signed by Edwin A. Brown, representing the public; and Earl Caton, representing labor. W. H. Schomburg, representing employers, dissented with opinion.

Dissenting Opinion of Employer Representative

May 14, 1945

WAGE RATES

The industry member of the panel does not concur in the recommendations of a majority of the panel in the above mentioned case and wishes to respectfully submit the following dissenting opinion.

Under the provisions of the existing contract between the company and the union and the application filed by the union requesting only an increase in the hourly rate of pay and no change in the incentive system or rates now in operation in the company's plant, I believe that the panel has no authority to recommend a change in the present incentive system as set forth in (b) and (c) of the recommendations of the majority of the panel.

The union and the company are, and have been since Nov. 22, 1944, operating under a written contract dated Nov. 22, 1944, and terminating Nov. 22, 1945. This contract is marked Exhibit "A" in the record. By the terms of this contract, the rates being paid by the company at the time of its execution were agreed by the parties to be rates of pay governing all union employees during the life of the contract. Under Art. X of the contract, the union was given the right once during the term of the contract to "request an increase in the present hourly or piecetime rates." It is agreed by the company and the union that "piecetime rates" mentioned in the contract mean piecework or incentive rates.

It will be observed that this language of Art. X of the contract, giving the union the right once during the term of the contract to apply for an increase in the hourly or incentive rates, is in the alternative. It is one or the other. The union must choose or select and decide whether to apply for an increase in hourly rates or in the alternative ask for an increase in the incentive rates.

In this Martin Box Company case the union elected to seek an increase in the basic hourly rates of pay. The union application made no reference to pay increase in piecework or incentive rates. As the record shows, it was not until some discussion occurred, led by Chairman Brown, regarding incentive rates that these rates were drawn into question. On this point, the company, through its attorney, called attention to the provisions of Art. X of the contract, and the application filed by the union seeking an increase only in hourly rates of pay. The company also objected, for the reasons above mentioned, to the panel considering and possibly recommending an increase in incentive rates.

When the objection was made by the company, considerable discussion was had as is shown by the record on pp. 65, and 69 to 86, inclusive. The record discloses that the union during this discussion limited itself, in accordance with the terms of the contract and its application, to requesting an increase of hourly base pay. On p. 81 of the record, the following discussion which occurred is recorded:

"Mr. Boggs: Well, I said, Mr. Scott, it is my interpretation of this contract that you reserve the right once during the term of the contract to request an increase in the present hourly rates or, in the alternative, to request an increase in the piece time rates or piecework rates, which are the incentive rates.

"Mr. Scott: Maybe I didn't make myself clear. I said that we would go along on the basis of our base pay, if and when the Board ordered anything. If the Board recognizes that the incentive is part of this thing, then we want a reflection. I mean, the only way they can recognize it is by either ordering—* * *

Chairman Brown: Why put it on that basis? Why not tell exactly what you want?

"Mr. Scott: Well, I did. I said we want it on the basis of our hourly base pay. That is what we are interested in.

"Chairman Brown: Well, you see, then you put the alternative up to the Board. If the Board says no, we can't do that because we don't know what they will do to the incentive system, they may deny it all. Maybe that is what you want. It is okeh with me. I am simply saying that you are choosing then, No. 1, here of your alternative.

"Mr. Scott: That is right."

At the bottom of p. 81 and top of p. 82 the following is noted:

"Chairman Brown: In other words, you are asking, simply and purely today, for an increase in the present hourly rates.

"Mr. Scott: That is right.

"Chairman Brown: With no reference to incentive rates at all.

"Mr. Scott: No, we don't want any incentive rate if we get the increases."

Again on p. 84 the following discussion occurred wherein the union stated its position was that they were making no request regarding incentive system.

"Chairman Brown: Don't put that 'if' because you can't put it that way. What I am saying is, what you have got to say is what you want, period. And I mean that is what comes before the panel.

"Mr. Scott: I told you we want it, period.

"Chairman Brown: All right. Then you make no request at all regarding the incentive system.

"Mr. Scott: That is right."

I am firmly of the opinion therefore, under the terms of Art. X of the union

contract and the application filed by the union for an increase only in hourly rates of pay, that the panel could only consider an increase in the basic hourly rates of pay, and had no authority whatever to consider or recommend an increase or any change in the present piecework or incentive system. Furthermore, the representative of the union, from the statements quoted from the record, disclaimed any right or claim for any increase or any change in the incentive rates now prevailing in the plant. Under the circumstances I cannot concur with the majority of the panel in recommending any change in the incentive rates or any change in the incentive standards of this company and dissent from the recommendation in (b) and (c). As to recommendation (d) I would not be adverse to request the company to make known to the employees by noon of the following day, the percentage of standard obtained on the day previous.

I cannot concur in the recommendation of a majority of the panel, as set forth in Par. (a) of the majority report, recommending an increase of five cents per hour in the base rate and all hourly rated jobs. The majority of the panel based this recommendation on the fact that this increase should be granted by applying the sound and tested rates of the wooden box industry to the rates being 99 per cent as a wirebound box Company in its Toledo plant, where the evidence shows clearly that this company is now and has been operating 99 per cent as a wirebound box plant since 1943, and practically its entire output of wirebound boxes is for the war effort. The manufacture of wirebound boxes is an entirely different process from the manufacture of wooden boxes, as disclosed by the record in this case.

Evidence was also submitted to the panel by way of a letter from the Martin Bros. Box Company, dated Mar. 29, 1945, addressed to the Chairman of the Panel, Dr. Edwin Brown, showing that the Office of Price Administration, one of the Federal Governmental agencies, recognized the distinction between the wooden box industry and the wirebound box industry.

The wooden box industry is governed by 2nd Revised MPR No. 195 as to ceiling prices on wooden boxes. This regulation gives the wooden box industry the privilege of taking the maximum price charged during March of 1942 or the average price charged by the company in October of 1944.

The wirebound box industry is regulated by the OPA regulation MPR 485. This regulation takes into account lumber and labor costs up to June 1942, but does not take into account any subsequent increased costs which have occurred in lumber or labor since that date.

The wirebound box industry, therefore, is limited in its ceiling prices to those properly fixed as of June 1942, while the wooden box industry may take the average price charged by the company as of October 1944.

In my opinion, this is another potent reason why this panel should not take the sound and tested going rates being paid by the wooden box industry in the Toledo area and apply them to the wirebound box industry. It further indicates that the Office of Price Administration has definitely differentiated between the wooden box industry and the wirebound box industry.

The Martin Bros. Box Company is the only wirebound box plant in the Toledo area. The company submitted a labor survey of the Wirebound Box Manufacturers Association showing the basic labor rates in Chicago, Cleveland, Buffalo, and Toledo wirebound box plants. This survey is attached to the record as Exhibit "H." Therefore, I do not feel that the sound and tested rates for the wooden box industry are applicable to the wirebound box industry in the Toledo area. In considering the sound and tested going rates, if any rates are to be considered other than those being paid by the Martin Bros. Box Company in the Toledo area, the only other evidence before the Board is that shown by Exhibit "H," offered by the Martin Bros. Box Company, and a consideration of these rates would not, in my opinion, justify any increase in the hourly rate of pay of this company, much less a straight-across-the-board increase of five cents an hour recommended by a majority of the panel.

Exhibit "C" offered by the company, shows that since Jan. 1, 1941, there has been an increase of 25 cents an hour granted the employees in the basic hourly rate, the first increase was June 21, 1941, of five cents an hour, the next was Nov. 1, 1941, of five cents

an hour, the next was June 21, 1942, of five cents an hour, and on May 1, 1943, an increase of ten cents an hour was granted. This company has granted hourly increases to its employees since Jan. 1, 1941, far in excess of the Little Steel formula. The increase sought by the union is not one in the nature of a substandard or in the nature of an intra-plant adjustment but a straight-across-the-board increase. The minimum hourly rate being paid employees now working ranges from 55 cents to 97 cents an hour, with a majority of the employees receiving between 65 and 80 cents per hour. The common labor hourly rate is 55 cents for women and 65 cents for men. Therefore, I cannot join in any recommendation which involves an increase in basic hourly rates.

The Toledo plant of this company, manufactures wirebound boxes principally, has competition in Chicago, Cleveland, and Buffalo, and the Board's attention is again called to Exhibit "H" showing a comparison of rates paid at those points and in Toledo. In addition, the company has competition in the South, but apparently did not offer these rates in evidence because of the locations being at some distance from its Toledo plant.

To summarize, I object to the general makeup of the "Panel Report and Recommendations," as prepared by Dr. Edwin A. Brown. It is stated that 130 employees are involved, actually the number of union employees in the plant has varied from 65 to 70. The plant has had German prisoners of war working with the approval of the union, and originally arranged for at the union's suggestion. The union agreed that the company would employ 50, but as a matter of fact the company never received more than 44, and it has varied from day to day from 38 to 44 from the time that the company started German war prisoners to the date of the hearing.

Dr. Brown states, "rates that were made by an employee on one day might be lowered, if he fell down in production the next day." This is not what is done. The rates are not changed. However, an employee's plus premium earnings are set up against his minus premium earnings for the week, but he is always at least paid his base rate. This plan has been in effect since the latter part of 1936 or early 1937, and the union, when signing the last contract and previously, has found this plan acceptable.

[Later on] Dr. Brown states, "this increase be reflected in the incentive rates," and makes this statement as being what the union asks. The record as quoted before does not confirm this. The union decided to request an increase only in the base rates.

Dr. Brown makes such statements as "the panel reached the conviction," "the panel denies the contention of the company," etc. All of these statements should in the opinion of the industry member probably be changed to state that two members of the panel, a majority, reached certain convictions, etc.

It is further stated that the operations which have to do with the cutting of boards in the various lengths to manufacture these boxes, "are more or less common to all wooden box factories." Again, in the opinion of the industry member of the panel, the operation in this wirebound box plant is entirely different than that in a wooden box plant. In the first place, the wood that is sawed for wirebound boxes is a veneer, ranging from 1/8" thick to 5/16" thick. The wood is sawed on gang cut off saws and gang rip saws, while in a wooden box plant the material is much heavier and is sawed by a single cut off saw or a single rip saw.

The sound and tested going rates for the wooden box industry in Toledo are described [in the panel report] as being arrived at by adding five cents to sound and tested going rates in Cleveland, I question whether this is the right procedure.

Following the tabulation of certain rates, it is stated that several years ago, employees made premium earnings. This is correct, in fact the plant then averaged about 115 per cent of standard rates. A great change in operating personnel was referred to. What is being recommended is an increase in the base rate which results in increased earnings for less efficient help and places a premium on being less efficient.

The [report] states that the panel discovered much objection to the incentive system as it now operates. Again attention is called to the fact that this same incentive system

has been in effect for years, and the union when renewing their contract has always accepted this incentive and the method used in figuring it. Actually, as stated before, the system has been used since late in '36 or early in '37. The engineering firm installing it restudied the system in 1942 and spent 11 months in doing so, finishing it about March of 1943, when certain readjustments were made. This is the same type of incentive system that is used in 95 per cent of the wirebound box factories throughout the country, and it has been installed by the same engineering firm. Page 63 of the record so states. The panel has no right to upset such a long established and widely used system.

Page 6, first paragraph of the report,* states that "when only 30 per cent of the employees make anything under the incentive something is wrong, and the blame in all fairness cannot be laid upon the employees." If the impression is intended to be conveyed that the blame should be laid upon the company, if there is blame, anywhere, I certainly object to this. The employees are not earning the incentive because they are less efficient than the employees that the company had on its payroll several years ago.

Page 6, third paragraph,* states that the panel wishes to point out that the "company is now employing some 50 prisoners of war at a flat rate of 65 cents per hour," and that a considerable number of them are working at jobs which under sound and tested rates they would have to pay 85 cents an hour for. It has not been stated in the panel report that some of the German prisoners of war are also working on jobs that would ordinarily be paid for at the rate of 55 cents per hour, and it further is not stated that the Martin Bros. Box Company paid $1.20 per day for each war prisoner for transportation, plus a federal tax of 15 per cent, which is a cost for each hour worked of 17¼ cents figured on an eight-hour workday, 65 cents plus 17¼ cents is 82¼ cents.

The Public Transportation Company to which these amounts were paid proved not to be dependable, and the company has invested in its own equipment, pays all operating costs and a driver for transporting war prisoners from the camp, Camp Perry to Toledo, and return daily. The company would still prefer to have an outside bus company do the hauling if it would maintain an "on time" schedule.

The industry member does not believe that the panel report, as prepared, covers all the facts in the case and respectfully requests that this dissenting opinion be given proper consideration by the Board.

Signed by W. H. Schomburg, representing employers.

* Ed. Note: See p. 592.

WITTE ENGINE WORKS—

Decision of Regional Board VII (Kansas City)

In re Witte Engine Works [Kansas City, Mo.] *and* United Electrical, Radio and Machine Workers of America, Local 803 (CIO). Case No. 111-5070-D, July 27, 1945.

WAGE ADJUSTMENTS — Progression plan—Length-of-service and merit increases

Employees whose performance meets requirements of job are entitled to length-of-service progression to mid-point of range, while adjustments beyond mid-point should be made on basis of merit as determined by company, where union contends that historic practice of granting automatic progressions existed and company contends that no such plan has been in effect. Board rescinds its previous order granting automatic increases to mid-point and making increases beyond mid-point subject to General Order 31, such directive having been remanded by National Board.

For other rulings see Index-Digest 225.630 and 225.640 in this or other volumes.

Majority decision of Regional Board VII (Kansas City) acting on remand order of Board. Public members concurring: Jack Day and Eugene Mannheimer. Labor members concurring: John I. Rollings and John A. Cassidy. Employer members dissenting on Pars. 1 (a), (b), and (c): Glenn R. Reed and George Heaps, Jr.

Directive Order

The Regional War Labor Board for the Seventh Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, acting upon instructions from the National War Labor Board, hereby reconsiders its action as set out in the directive order of Oct. 28, 1944, and orders as follows:

The action of the Board as covered in Items No. 1 and 2 of the Board's directive order of Oct. 28, 1944, is rescinded and in lieu thereof the following is ordered:

1. Progression Plan

The following progression plan shall be made applicable to the rate ranges herein involved:

(a) Any employee whose performance meets the requirements of the job shall reach the mid-point of the range in 180 days, such advancement to be achieved by two steps of 90-day intervals, each step covering one-fourth of the spread of the range.

(b) In the event any employee does not receive the adjustments set out above in the periods of time so specified, his case may be submitted as a grievance through the established grievance and arbitration machinery provided in the contract. If it is determined that the employee's performance meets the requirements of the job, he shall receive the increase necessary to bring his rate into conformity with the progression steps set out in (a) above. If it is determined that the employee's performance has not met the job's requirements, the grievance shall be dismissed.

(c) Progression from the mid-point to the maximum of the range shall be based on merit as determined by the company, and any grievance arising from the application of the company's plan shall be subject to the grievance and arbitration machinery provided in the contract.

2. Retroactivity

Wage adjustments made necessary by the application of Par. 1 (a) above shall be effective retroactive to Nov. 17, 1943, the date of certification. The parties shall work out through negotiations a method of applying said provision retroactively. In the event the parties fail to agree on the method, the issue shall be returned to the Board.

The procedure to be followed in making the retroactive payment to those employees who have quit or been discharged shall be in accordance with the National War Labor Board's resolution of Apr. 2, 1943 [26 War Lab. Rep. 3].

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intenton of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect seven (7) days from the date hereof unless in the meantime, a petition for review by the National War Labor Board is filed with the Seventh Regional War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition for review by the National War Labor Board is filed wherein review of portions of this order is requested, either party may request the National War Labor Board to make the remaining portions of the order immediately effective.

As provided in Sec. 802.40 of the "Rules of Organization and Procedure of the National War Labor Board," this order is subject to review by the National War Labor Board at any time on its own motion.

Directive Order of National Board

June 4, 1945

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted, in so far as it relates

to the automatic progression plan and retroactivity thereof, the petition filed by the company for review of the Seventh Regional War Labor Board's directive order of Oct. 28, 1944, in the above entitled case and having reviewed the merits of the case, hereby orders:

I. The issues involving a progression plan and retroactivity thereof are hereby remanded to the Seventh Regional War Labor Board for reconsideration.*

II. That part of the petition for review which relates to procedure is hereby denied.

Signed by Lewis M. Gill and Dexter Keezer, public members; Earl Cannon and Lee H. Hill, employer members, subject to dissent on Par. II; and Delmond Garst and Raymond McCall, labor members, subject to dissent on Par. I.

Directive Order of Regional Board VII (Kansas City)

Oct. 28, 1944

The Regional War Labor Board for the Seventh Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of October 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

1. Progression Plan †

The Board hereby directs the following progression plan to be made applicable to the rate ranges herein involved.

(a) Automatic Progression shall apply from the minimum of the range to the mid-point of the range and shall be achieved in two steps of 90-day intervals. At each step one-fourth (¼) of the spread shall be awarded.

(b) From the mid-point of the range to the maximum of the range, progression shall be in conformity with General Order No. 31. [23 War Lab. Rep., No. 1, IV, 26 War Lab. Rep., No. 4, VII; WCDS 143]

(c) The Board further directs that, should grievances arise with reference to the application of merit increases under General Order No. 31, such grievances shall be subject to the grievance procedure in the contract.

2. Retroactivity

The Board hereby directs that the wage adjustments pursuant to the automatic progression, as set out in 1 (a) above, shall be effective retroactive to Nov. 17, 1943.

The Board further directs that there shall be no retroactive adjustment on the merit increases, as set out in par. 1 (b) above. Such adjustments shall be effective as of the date of this directive order.

The procedure to be followed in making the retroactive payment to those employees who have either quit or been discharged shall be in accordance with the National War Labor Board's resolution of Apr. 2, 1943. [26 War Lab. Rep. 3]

The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect fourteen (14) days from the date hereof unless, in the meantime, a petition for review by the National War Labor Board is filed

* Ed. Note: The issues were remanded for reconsideration in the light of WLB policy as indicated by the National Board decisions in cases involving, the W. L. Maxson, 21 War Lab. Rep. 268, 22 War Lab. Rep., No. 2, XLI, 25 War Lab. Rep. 308, General Electric, 18 War Lab. Rep. 690, and Rane Tool companies, 24 War Lab. Rep. 482, cases. (Information supplied by WLB staff.)

† Ed. Note: On Apr. 13, 1944, the Board settled various issues in dispute, granted a general increase of ten cents an hour, and referred the issue of job classifications back to the parties for negotiation. During these negotiations, the union again raised the issue of in-grade progression. The company objected to the issue being raised, claiming that the union's demand had, in effect, been denied by the Regional Board's order of Apr. 13, which made no reference to in-grade progression. The union, therefore, asked the Regional Board to take jurisdiction. The Board accepted jurisdiction, gave the parties time to file briefs, and issued the directive order of Oct. 28, 1944.

In its brief, the union claimed that at this plant there was an historic practice of automatic progression under which most employees were advanced from the minimum to the maximum of their rate ranges within a year. The union requested that automatic progression be granted retroactive to the certification date of the case. The company contended that no record of an automatic increase plan existed in its files. (Information supplied by WLB staff.)

with the Seventh Regional War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree.

Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition for review by the National War Labor Board is filed wherein review of portions of this order is requested, either party may request the National War Labor Board to make the remaining portions of the order immediately effective.

Signed by Paul G. Toohey, Robert L. Howard, and John C. Friedl, public members, Mr. Toohey subject to dissent on Par. 1 (c), Mr. Friedl voting only on Pars. 1 (c) and 2; Robert M. Murray, George H. Kinney, Charles F. McKnight, employer members, Messrs. Murray and Kinney subject to dissent on Par. 1 (c), Mr. McKnight voting only on Issues 1 (c) and 2; and Warren D. Welsh, John A. Cassidy, and Edgar H. Holmes, labor members, subject to dissent on Par. 2, Mr. Holmes voting only on Pars. 1 (c) and 2.

*Report and Recommendations of the Panel**

PARTIES TO THE DISPUTE

The company involved is the Witte Engine Works, a corporation, located at 1600 Oakland, Kansas City, Mo. The company manufactures and sells Diesel engines and is engaged 100 per cent in the filling of war orders. The number of employees involved in this matter is approximately 150.

The union is the United Electrical, Radio and Machine Workers of America, affiliated with the CIO, Local 803.

HISTORY OF THE CASE

The union in this case was certified as the collective bargaining agent on Aug. 19, 1943, and efforts were made from that date to Oct. 8, 1943, to negotiate a first contract with the result that request was made for a commissioner of the U. S. Conciliation Service, and Commissioner William Houston was assigned and entered the situation on Oct. 9, 1943. Numerous joint and individual meetings were held, with the result that the following issues here stated were still undecided.

ISSUES

1. Maintenance of membership and check-off,
2. War clause,
3. Wages, and
4. Retroactive date.

[Ed. Note: Discussion on Issues 1 and 2, in the panel report at this point, is omitted.]

3. Wages

Union's Position

The union requests a general wage increase which will bring up the company's wage scale to the sound and tested going rates in the Kansas City and St. Louis areas. This request is put forth in the union submission, Exhibit A, which will be found attached to the commissioner's report on the case, p. 3, marked in the files as Union Exhibit B. The union contends there has been no general increase of 15 per cent since Jan. 1, 1941, and therefore that the Board either direct the company to pay the scale as found in the commissioner's report as above or grant a general increase of 15 per cent. The union further requests that a maximum and minimum rate be established as also a regular step-up of five cents after one month; five cents after the next two months; five cents after the next three months, and five cents every three months thereafter until the maximum is reached—thus preventing the company from keeping an employee at the minimum as his efficiency increases. The union found fault with the classification submitted by the company in their brief, saying many of these had not previously existed and there appeared to be as many classifications as there were men.

Company's Position

The company maintains that there has been a general increase in excess of 15 per cent since Jan. 1, 1941, and submits as evidence Exhibits D and E of their brief. The only sense in which one could possibly say that there has not been a general 15 per cent increase is that the increase was not given simultaneous throughout the whole plant. The company maintains they are giving a wage comparable to similar companies in this area. The company maintains that, when job content and not name is considered,

* Ed. Note: Only that portion of the panel report relating to wages is reproduced.

they are in line with other companies. The company claims in Exhibit F that they obtained from the Regional Board the maximum they could pay in the latter part of 1942 and are paying this scale. The company claims that the scale of wages asked by the union as found in Exhibit F does not represent the sound and tested going rates in the Kansas City area, especially if job content is taken into consideration.

Discussion and Recommendation

A study was made of the wage scale in several similar plants by the industry member of the panel and then submitted to the labor member and the public member; it reflects what is thought to be the fair and equitable thing to do in this case and keep within the regulations and still have the men receive a comparable wage to men doing similar work in Kansas City. The Board will note that, when there is question of the higher skilled job, the period for them to reach the top is lengthened because we do not feel that you can turn out a machinist or other really skilled men in a short period of time except in rare instances. Our specific reason for submitting this proposal to the Board on wages is that we think this is in keeping with similar work in similar plants. Some raises have been given to do away with inequalities, and all have been put on a basis that appears to us to be in line with the sound and tested rates for similar work in this area.

[Ed. Note: Discussion on Issue 4, in the panel report at this point, is omitted.]

Signed by D. H. Conway, representing the public; and J. H. Hodes, Jr., representing employers. Carl L. Stevens representing labor, dissented with opinion.

Dissenting Opinion of Labor Representative

[Ed. Note: Discussion on Issues 1 and 2, in the dissenting opinion at this point, is omitted.]

3. WAGES

It is my opinion the majority panel recommendation goes far beyond the policy established by the Board in resolving wage rate disputes. First, the panel, in making its recommendation, disregards completely the sound and tested going rates as established for the machinery and foundry industries by the Seventh Regional War Labor Board in its bracket determinations of Nov. 24, 1943. The majority report of the panel states: "A study was made of the wage scale in several similar plants by the industry member of the panel," and then the majority of the panel proceeds to set this up as the criteria for the settlement of this dispute. It is my position that the contention of the union, which is set forth in their proposed schedule of rates, shall be approved in toto inasmuch as it conforms with the sound and going rates established by the Seventh Regional War Labor Board.

I further propose that the Board grant the union's request that their proposed hiring rate for each job classification shall be approved and that the employee shall receive a five-cent per hour automatic increase per month until it reaches the maximum rate of the job classification.

I propose that the Board reject the panel's exhibit on rates and job descriptions (which they call "comments") inasmuch as this entire document is the invention of the Witte Engine Works. Permit me to point out the last sentence on p. 2 of the majority panel's wage rate structure and job description, which states: "Bench, floor, machine, all classed as journeymen molders, and core work molders and core makers—is performed by our worker molder and core maker foremen" and just under the title of "drill press," "All of our drill press work is simple repetition work performed with jigs and fixtures requiring a minimum of experience and skill." It is obvious that the company drafted this entire document.

In view of the above, I urge the Board to not only reject the findings of the majority of the panel but to issue its order in this case on wages, instructing the parties to negotiate proper job descriptions to comply with the ruling of the Board on a wage structure permissible under the sound and tested going wage rate brackets; that, if any dispute arises, it shall be submitted to the Board for final determination and become part of the collective bargaining agreement. I wish to call the Board's attention to the factual testimony made by shop workers Arthur Waller, W. E. Howard, and others, regarding the actual char-

acter of their work. I urge the Board to give proper weight to this testimony, upon which the Board must base its findings in ruling on the request of the union.

I wish to reject the whole contention of the majority of the panel's recommendation that the company has granted to its employees increases equivalent to the 15 per cent Little Steel formula. There is nothing in the record to substantiate this fact. Whereas the company attempts to prove by charts and figures that individual employees had received increases beyond the 15 per cent on the basis of merit, the record shows that the company has not computed any actual figures, and merely states (p. 68) that the increases from 7 per cent to 29 per cent would obviously give an average beyond the 15 per cent. This cannot be accepted by the Board as an "obvious fact." This system of so-called merit increases was, in fact, increases within a specific range of rates. The facts are that the minimum and maximum of these wage rate ranges are the same today as they were on Jan. 1, 1941. Further, the company testified itself (pp. 83, 84, 88) that these increases were the result of upgrading from Class D to C to B to A1 work. The record amply supports the union's claim for a general 15 per cent increase or the establishment of a wage range in keeping with the wage bracket determinations of the Board for this type of industry. I urge the Board to support the union's position.

[Ed. Note: Discussion on Issue 4, in the dissenting opinion at this point, is omitted.]

Signed by Carl L. Stevens, representing labor.

GENERAL MOTORS CORP.—

Decision of Regional Board XI (Detroit)

In re General Motors Corporation, Buick Motor Division [Flint, Mich.] *and* International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (Clerical Employees), Local 599 (CIO). Case No. 111-14801-D, Aug. 10, 1945.

SENIORITY—Separate seniority lists for men and women—Transfers between bargaining units—Retention of seniority

Company is not entitled to establish separate seniority lists for male and female clerical workers despite fact that company's general practice is to establish such dual seniority lists. Union's request for single seniority list is granted since seniority is proper matter for collective bargaining and nature of clerical work, as contrasted with factory work, does not justify separate seniority lists.

Employees transferred between clerical and production bargaining units represented by locals of same international union are entitled to retain seniority where (1) order represents company's past practice and (2) both bargaining representatives are agreeable to such provision. Order should not, however, operate to permit employees in one unit to replace employees within other unit in event of a layoff.

For other rulings see Index-Digest 155.285 and 155.555 in this or other volumes.

Majority decision of Regional Board XI (Detroit) amending recommendations of hearing officer. Public members concurring: Louis C. Miriani and Herman J. Wyngarden. Labor members concurring: Samuel D. Smith and Archie Potter. Employer members dissenting on Pars. 1, 2, 3, 4, and 5: John L. Lovett and Robert J. Mason.

Directive Order

I. The Regional War Labor Board for the Eleventh Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Congress of Oct.

2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties.

1. Seniority List for Occupational Groups

The following provision shall be included in the agreement of the parties:

"When an employee acquires seniority, his name shall be placed on the seniority list for his occupational group in the order of his date of seniority."

2. Seniority (Bargaining Unit)

The last sentence of Par. 56, which reads as follows, shall be deleted:

"No seniority provisions of this agreement shall apply outside of this bargaining unit."

Par. 56(a) shall be included in the agreement of the parties:

"When an employee is transferred from the production unit of this division to the clerical unit or vice versa either at the division's request or at the request of the employee granted by the division, there shall be no loss of seniority; provided, however, that, in the event of a layoff, no employee then in the clerical unit shall be permitted to displace an employee then in the production unit nor shall any employee then in the production unit be permitted to displace an employee then in the clerical unit."

3. Maintenance of Membership

The union is awarded a standard maintenance-of-membership provision as adopted by the National War Labor Board on Nov. 27, 1943 [12 War Lab. Rep. XXVIII; WCDS 321].

4. Wages

The full rate for office clerk—Female Classification No. 1079—shall be increased from 84 cents to 99 cents per hour, and the hiring and intermediate rates shall likewise be increased by 15 cents per hour each.

5. Retroactivity

Increases resulting from Par. 4 shall be made effective as of Mar. 26. 1945.

Any employee whose service with the company has terminated since Mar. 26, 1945, shall be entitled to retroactive pay in accordance with the resolution of the National War Labor Board of Apr. 2, 1943 [26 War Lab. Rep. 3].

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

III. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect 14 days from the date hereof unless in the meantime a petition for review is filed with the National War Labor Board, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree, provided that the 15-day period referred to in Par. 3 above shall be deemed to run from the date of this order.

IV. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the National War Labor Board seeking review of portions of this order either party may request the regional War Labor Board to make the remaining portions of the order immediately effective.

Report and Recommendations of the Hearing Officer *

BACKGROUND

The International Union UAW (CIO) was certified as the collective bargaining agent for the clerical unit in the above plant on Oct. 29, 1943. Since that time the parties have been negotiating a collective bargaining agreement. They have been unable to agree upon the matters subsequently discussed herein, and the dispute was certified to the War Labor Board by the United States Department of Labor on Mar. 26, 1945.

A hearing was conducted before the undersigned hearing officer on May 5, 1945, at Detroit, Mich. On June 1, 1945, the hearing officer visited the plant and observed the work.

ISSUES

The problems upon which the parties have been unable to agree center around the question of what type of seniority shall prevail, the issue of maintenance of union membership,

* Ed. Note: Only that portion of the hearing officer's report relating to seniority is reproduced.

and wage rates, and may be stated as follows:

I. Whether or not men and women shall be placed in noninterchangeable occupational groups,

II. To what extent, if any, shall seniority accompany the transfer of personnel between this bargaining unit and other bargaining units within the division,

III. Maintenance of membership, and

IV. Wages.

I. Placement of Men and Women in Noninterchangeable Occupational Groups

Shall men and women be placed in noninterchangeable occupational groups?

Union's Position

The corporation proposes to include as Par. 51 of the agreement the following statement:

"When an employee acquires seniority, his name shall be placed on the seniority list for his occupational group in the order of his date of seniority. *Men and women shall be divided into separate noninterchangeable occupational groups.*"

The union opposes that portion of the paragraph which is italicized and suggests that men and women be placed on a single seniority list in this bargaining unit. The union is afraid that management will lay off men and retain women, which would be decidedly unfair to the men who have been called into the armed services during the war. Under two seniority lists, the union argues, it would be possible to do away entirely with male jobs.

The union alleges that, as a matter of fact, the company is now placing on one seniority list both men and women and that this practice should be continued. A sample of such a list was submitted.

Company's Position

The company proposes that men and women be on separate seniority lists so that, in the event of a layoff, men would be laid off in relation to other men and women in relation to other women, reserving to the company the choice of what proportion of men should be laid off at any given time.

The union's apprehension over the possible displacing of men by women is entirely without merit as it is the definite policy of the company to replace women with men as soon as possible and convenient.

The corporation sets forth that the problem is primarily one of principle as there are only 17 women in the bargaining unit compared with 328 men; 9 women are in a female classification and cannot be displaced within that classification by men, while 8 women are more or less temporarily assigned to the male classification because of the inability to hire enough men therefor.

Management feels that the women in this plant are not entitled to equal job security with men, and the corporation's proposal would enhance the security for returning war veterans. Although the problem is primarily one of principle, management is concerned because of the effect it might have on the production and maintenance bargaining unit, in which men and women are in separate noninterchangeable occupational groups.

Findings

The hearing officer finds that it has not been the practice of the company to place both men and women in a single occupational group. The seniority list which was presented by the union to establish the contrary contains approximately 52 names, 51 of which are male. The presence of one woman, Leaf M. Bradley, was a clerical error. The union did not show any other lists or instances which would establish its contention. The National General Motors agreement of October 1942 (Par. 58) requires men and women to be in separate occupational groups. The agreement of April 1945 permits the contrary if locally agreed upon. No such agreement has yet been reached at Buick Flint division.

Discussion

The hearing officer attempted to resolve this issue by reference to accepted labor relations principles and practice in industry. After considerable research, however, he is unable to find that any consistent practice exists regarding single or dual seniority lists, particularly within clerical bargaining units or establishments. There are some fundamental considerations, however, which throw light upon the problem. It is generally understood that women are entitled to the same treatment as men in so far as wages and working conditions are concerned, having due regard to differences in temperament and function. Manifestations of this concept are to be found in the "equal pay for equal work" decisions of the War Labor Board and

the various state and federal regulations governing the employment of women. In line with this thinking, women should receive equal, if not identical, treatment in so far as their seniority rights are concerned, seniority being an important working condition or incident.

There are some fundamental differences between clerks and factory workers which deserve consideration. Clerical occupations are not inherently hazardous nor do they require skills beyond the capabilities of females. Indeed, within commercial establishments, such as insurance companies, public utilities and the like, the clerical occupations are almost entirely filled by women. These considerations tend toward the establishment of the union claim and are of considerable weight. Clerical groups are not identical with factory groups, and identical considerations do not apply from that point of view.

There are few decisions of the War Labor Board which are closely in point. In Mueller Brass Company, 15 War Lab. Rep. 612, involving layoffs for a large number of women, the Eleventh Regional Board acknowledged the fact that seniority problems may become very complicated and protected existing female seniority rights, allowing management, however, to determine which jobs should be performed by women.

In Westinghouse Air Brake Company, 13 War Lab. Rep. 221, the past practice consisted of keeping men and women on a single seniority list, and the corporation's request to split them up into separate lists was denied. In that case it was established that men and women frequently worked side by side in the same classification. Both the foregoing cases involve factory occupations.

The hearing officer is of the opinion that no justifiable basis exists for the separation of male and female classifications as such within a clerical unit. The division has, however, done so in the past, and the question is raised as to how far the War Labor Board should direct a change in company policy in this respect. The considerations for such policy are based primarily on historical considerations rather than any great differences of efficiency in performance of clerical tasks.

Upon full consideration of all the relevant factors, the hearing officer is of the opinion that the union's contention should be upheld inasmuch as seniority is a proper matter for collective bargaining and peculiar considerations are applicable to a clerical group. Such conclusion is not indicative of the opinion that the same result should be reached in a production and maintenance unit.

Recommendation

That the union's request be granted and the sentence "Men and women shall be divided into separate noninterchangeable groups" be stricken from Par. 51 of the proposed agreement.

I. Seniority in Respect to Transfers to Different Bargaining Units

To what extent, if any, shall seniority accompany the transfer of personnel between the bargaining unit and other bargaining units within the division?

Union's Position

Management proposes to include in Par. 56 of the proposed agreement the following sentence, "No seniority provisions of this agreement shall apply outside of this bargaining unit."

The union wishes to permit transfers between the production and maintenance bargaining unit and the clerical bargaining unit, the employee to carry his seniority with him in each instance. It alleges that production employees have been transferred into the clerical unit within the past few years with the understanding that, if and when they elected to do so, they could return to their former unit without loss of seniority. The union points out that it has been the past practice of the company to transfer employees back and forth between production and clerical departments without loss of seniority. Three such instances were cited.

The union requests that the past practice of the corporation be continued and the above clause be stricken. The union alleges that the production and maintenance bargaining unit is agreeable to the proposal of this group.

Company's Position

The corporation states that the union's position in this case is unusual in that it usually seeks to restrict seniority to the confines of the bargaining unit. The company does not deny the allegations as to past practice, but argues that now that the clerks have become organized, the continued transferring of employees

back and forth between units without loss of seniority would provoke many grievances and three-cornered arguments between the company and each of the two bargaining units. Even though the production and maintenance group is now agreeable, there is no guarantee that it will continue so to be and relationships between the corporation and each unit would very likely deteriorate.

The corporation also argues that this matter is one which the clerical unit representatives have no right to bargain inasmuch as it concerns a unit with which they are not affiliated.

Findings

The hearing officer finds that it has been the past practice of the corporation, prior to the certification of the clerical group, to transfer both production and clerical employees back and forth between production and clerical departments without loss of seniority. No showing was made that the bargaining agent for the production employees or any individual employee ever protested against such practice. On the other hand, neither was it alleged that such practice adversely affected any individual employee by way of loss of job or being "bumped" to a lower paid job so that protests should have been expected.

The hearing officer finds that the international union is the designated agent for both bargaining units and an agreement on its part with the corporation could be binding upon both units. The local union is the agent for the international and has no separate certification.

Discussion

As stated by the company, the union's position in this case is contradictory to the usual union attitude that the members of the bargaining unit are to be protected from encroachment by outsiders in the maintenance of their seniority status. A valid reason exists for the present position, however, in that within the Buick division, transfers back and forth between the production and clerical departments are customary.

The hearing officer does not feel that an employee within the clerical unit should be permitted, in the event of a layoff, to "bump" an employee in the production unit or vice-versa. The same consideration which prompt the National Labor Relations Board to separately certify the clerical group would tend to keep this group separate from other units in so far as job security is concerned. On the other hand, in the event an employee is transferred from one unit to another in the interests of efficient plant operation, it does not seem proper that such an employee should be penalized by losing his accumulated seniority in his new position.

Par. 62 of the national agreement of Oct. 19, 1942, protects the seniority of employees who are transferred from one occupational group to another for any reason. Similar protection should not be denied for employees transferred across bargaining unit lines where such transfer is at the request of the corporation or at the request of the employee and agreed to by the corporation for reasons of efficiency in overall plant operations.

The international union is a party to this dispute, and the directive order of this Board can control and bind it as the representative not only of the clerical unit which is directly involved, but also as the representative of the production and maintenance unit which is indirectly involved. The Board has jurisdiction of all the necessary parties to effectuate a directive on this issue.

Recommendation

The Board should direct that the last sentence of Par. 56 should be stricken, and the following clause added to the proposed agreement as Par. 56 (a):

"When an employee is transferred from the production unit of this division to the clerical unit or vice versa either at the division's request or at the request of the employee granted by the division, there shall be no loss of seniority; provided, however, that, in the event of a layoff, no employee then in the clerical unit shall be permitted to displace an employee in the production unit nor shall any employee then in the production unit be permitted to displace an employee then in the clerical unit."

[Ed. Note: Discussion on Issues III and IV in the hearing officer's report at this point is omitted.]

Signed by Gabriel N. Alexander, hearing officer for the Board.

CONTINENTAL GIN CO.—

Decision of Regional Board VIII (Dallas)

In re CONTINENTAL GIN COMPANY [Dallas, Texas] *and* UNITED STEELWORKERS OF AMERICA, LOCAL 3347 (CIO). Case No. 111-12646-D [8-D-376], Aug. 11, 1945.

CHECK-OFF—Voluntary, binding check-off denied

Union of steelworkers representing employees in plant manufacturing cotton ginning machinery is not entitled to compulsory check-off clause but only to maintenance-of-membership provision, despite its contention that it is entitled to both clauses as matter of "right" under precedent of Little and Basic Steel cases. National Board has never established any such blanket policy, and, therefore, Regional Board will continue to award check-off only for some definite and specific reason existing in particular case.

For other rulings see Index-Digest 20.811 in this or other volumes.

Majority decision of Regional Board VIII (Dallas). Opinion No. 1 by A. Langley Coffey and Clifford W. Potter, public members. Opinion No. 2 by Mr. Coffey. Public member dissenting on Sec. 21: Mr. Potter. Labor members dissenting with opinion on Secs. 2, 6, 7, 12, 13 (1) (6), 14, 16, 17, 19, 20, 21, 22, and 23: R. E. Curtis and R. B. James. Employer members dissenting with opinion on Secs. 6, 12, 13, 16, 19, 20, and 22: W. S. Bellows and Alto B. Cervin.

Directive Order

I. The Regional War Labor Board for the Eighth Region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of Jan. 12, 1942, the Executive Orders, directives and regulations issued under the Act of Congress of Oct. 2, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby decides the dispute between the parties and orders that the following terms and conditions of employment shall govern the relations between the parties:

Sec. 1. Hours of Work

The Board hereby approves the agreement of the parties in so far as the issue, hours of work, is concerned and orders and directs that the following provision be included in the contract between the parties:

"A. This section is intended to provide the basis of calculation of and payment for overtime and allowed time and shall not be construed as a guarantee of hours of work per day or per week or days of work per week.

"B. Overtime at the rate of 1½ times the regular hourly rate of pay shall be paid for all hours worked in excess of 8 hours in any one day and for each hour worked in excess of 40 hours in any 1 week. For the purpose of this agreement, a day is any consecutive 24 hours beginning with the hour the employees report for work. The normal workweek will be 40 hours, and the normal workday will be 8 hours, exclusive of lunch period.

"C. No premium wage or extra compensation shall be paid for work on Saturday or Sunday except where such work is performed by the employee on the sixth or seventh day worked in his regularly scheduled workweek.

"D. The workweek now in effect starts at 12:01 a.m. on Monday and ends on 12:01 a.m. on the following Monday. The first shift shall start to work at 8:00 a.m. on Monday except as controlled by the other portions of this paragraph. It is agreed that the workweek will continue to start at 12:01 a.m. on Monday unless a change in said starting day and hour becomes necessary in order to effect or maintain orderly operations. Should such change become advisable, the company will so inform the Union, and said parties will make a valid effort to mutually agree upon said change. It is further understood that, if the company and the union are unable to agree or do not agree upon such change as to the starting day and hour, the Company shall nevertheless place such change into effect. In such event, if the Union feels that such change will work an undue hardship upon the employees, the matter may be taken up and handled in accordance with the grievance machinery elsewhere provided for in this agreement. Except as hereinabove provided with regard to the day and hour on which the workweek shall start, the company reserves the right to fix, alter, or change the workweek, the workday, the hours of work, the number of shifts, and the

time of each. Saturday and Sunday shall be considered as regular workdays, and work performed on those days shall be paid for at straight-time rates except as hereinabove provided.

"E. Any shift worked on the sixth consecutive day in any one workweek will be paid for at the rate of time and one-half, provided the employee has worked without loss of time in his regular shift for the first five days of that workweek.

"F. Any shift worked on the seventh consecutive day in any one workweek will be paid for at the rate of double-time provided the employee has worked, without loss of time, his regular shift for the first six days of that workweek.

"G. Any lost-time hours in any regular shift in any scheduled workweek for any employee, if made upon the sixth and seventh day in his regular shift, shall be paid for at straight time, and any time worked in excess of these lost-time hours on the sixth and seventh day will be paid for at the rate of time and one-half.

"H. In computing the number of shifts worked by an employee for the purpose of determining the premium pay for the sixth day worked, the following shall be considered shifts worked, and time lost on account of the following will not be counted against the employee in determining premium pay:

"1. Shifts or parts of shifts lost by employees when unable to work on account of injuries sustained by accidents arising out of and in the course of employment by the Company provided these accidents are promptly reported to the doctor or first aid attendant designated by the Company.

"2. Shifts or parts of shifts lost where an employee reports for work with a reasonable expectation of working and is sent home because of lack of work or other reasons beyond his control.

"3. Shifts or parts of shifts lost on account of one of the six scheduled holidays as designated in this contract.

"4. Shifts or parts of shifts lost because of a call from the draft board, provided the employee furnishes the Company with sufficient evidence that he was notified to report to the draft board.

"5. Shifts lost on account of scheduled vacations, provided the employee returns to work on his shift scheduled at the completion of his vacation period.

"6. Shifts or parts of shifts lost by employees because of a call for jury service, provided the employee furnishes the Company with sufficient evidence that he was notified to report for jury service.

"7. Shifts or parts of shifts lost by employees because of a call to appear as a witness in court, provided the employee furnishes the Company with sufficient evidence that he was notified to appear before the court as a witness.

"8. Shifts or parts of shifts lost by committee members while attending meeting of the grievance committee with the Company.

"9. Shifts or parts of shifts lost by members of the grievance committee while attending to grievance matters on company property in addition to, and other than, attending meetings of the grievance committee with the Company.

"10. Shifts or parts of shifts lost in giving blood donations or blood transfusions to the American Red Cross or to a fellow employee or to the members of the immediate family of such fellow employee.

"11. Shifts or parts of shifts lost because of the employee being laid off for lack of work.

"I. In computing the number of shifts worked by an employee for the purpose of determining the premium pay for the seventh day worked, the following shall be considered shifts worked, and any time lost on account of the following will not be counted against the employee in determining premium pay:

"1. Shifts or parts of shifts lost on account of one of the six scheduled holidays as designated in this contract.

"2. Shifts or parts of shifts lost where an employee reports for work with a reasonable expectation of working and is sent home because of lack of work or other reasons beyond his control.

"J. It is agreed and understood that changes in the reasons set forth in Subdivisions H and I above may be made from time to time by mutual agreement of the Company and the Union, such changes to be reduced to writing and made a part of this agreement as an amendment thereto, as provided in Art. XIV hereof.

"Should an employee be absent for a reason not covered by Subdivisions H or I above and any amendments that may have been made thereto, which

reason the union deems to be a justifiable one, said absence may be presented and considered under the grievance procedure set out in Art. VI hereof.

"K. Overtime payments shall not be duplicated for the same time worked. In cases where more than one overtime rate is applicable, the higher rate shall be paid.

"L. Wherever, unless some condition develops from unforeseen breakdowns as strikes, fire, flood, or Act of God, an employee who is so scheduled to work on a particular day is laid off on that particular day and rescheduled to work upon a day scheduled to be a day of rest, he shall receive time and one-half on the day so worked."

Sec. 2. Vacations

The Board orders and directs that Pars. A, D, and F, of the vacation provision shall be included in the contract between the parties.

The Board hereby approves the agreement of the parties on the issue of vacations in so far as Pars. B, C, and E, are concerned, thus making the entire provision reading as follows:

"A. The absence from work on leave of absence or on account of layoff of any employee covered by this contract shall not be counted against such employee in determining whether or not he is entitled to a vacation, but absence from work, for any cause whatsoever, shall be taken into consideration in determining the pay to which the employee shall be entitled during his vacation period. For each 30 working days such employee shall have been absent from work during the year immediately preceding his vacation, the Company may deduct from such employee's vacation pay 1/12th part thereof.

"B. Each employee who has one year of continuous service with the company shall be granted a vacation of one (1) week with pay as for forty (40) hours at his regular hourly base rate of pay.

"C. Each employee who has five years of continuous service with the company shall be granted a vacation of two (2) weeks with pay as for eighty (80) hours at his regular base rate of pay.

"D. The parties agree that the company may select a period of ten weeks, not necessarily consecutive, during each year while this contract is in effect during which employees shall not be entitled to take a vacation but that the company shall give notice to employees of such ten weeks' period at least thirty (30) days in advance to the commencement thereof. Except during said ten weeks' period, vacations will be given to employees at the time requested in so far as possible. Seniority shall be the basis for assigning vacation periods, in so far as the same does not conflict with the substantial efficiency and production of the company.

"E. Vacations shall be taken in a vacation period most convenient to the company so that operations shall not be interfered with.

"F. All employees shall file with the company, on forms furnished by the company, at least thirty (30) days prior to the expiration of the ten weeks' period selected by the company during which vacations cannot be taken, the dates on which they wish to start vacations, and within thirty (30) days thereafter [the company shall post a schedule of] vacations with respective dates of such vacations set opposite the employees' names."

Sec. 3. Holidays

The Board hereby approves the agreement of the parties, in so far as the issue of holidays is concerned, and orders and directs that the following provision shall be included in the contract between the parties:

"A. New Year's Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Eve, and Christmas Day shall be included as holidays.

"Time and one-half shall be paid for all work performed on these holidays.

"B. Holidays shall be considered as days worked, whether worked or not and regardless of whether they are scheduled as days of work or of rest, for the purpose of determining whether an employee has worked six days in his scheduled workweek or has worked six consecutive workdays.

"C. No premium wage or extra compensation shall be paid for work on customary holidays as such, except that time and one-half wage compensation shall be paid for work performed on the following holidays: New Year's Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Eve, and Christmas Day."

Sec. 4. Reporting Pay

The Board hereby approves the agreement of the parties, in so far as the issue of reporting pay is concerned and orders and directs that the following provisions shall be included in the contract between the parties:

"A. Employees who are regularly scheduled or who are notified to report for work shall be paid, in the event no work for which they are scheduled or notified to report is available, for four (4) hours' work at the base or hourly rate in effect for the occupation at which they were scheduled or for which they were notified to report. At management's discretion, the employees scheduled or notified to report may be assigned to other substantially similar work for which they may be qualified in lieu of their being released. Should employees refuse such assignment, they shall not receive the four (4) hours' reporting pay.

"B. Employees who are scheduled or who are notified to report and actually begin work at the start of a shift and work less than four (4) hours or are assigned or reassigned by management to other substantially similar work shall be paid for a minimum of four (4) hours at base or hourly rate in effect for the occupation at which they began work. Should employees refuse such work, they shall only be paid for actual time worked. Employees may be assigned to additional substantially similar work beyond the four (4) hour period; and employees so assigned to other work shall be paid for the actual hours worked at the rate of pay for the occupation to which they were assigned.

"C. All hours paid for as reporting time, as outlined in the above provision, shall be counted as hours worked in computing overtime.

"D. In the event that:

"1. Strikes, work stoppages in connection with labor disputes, breakdowns of equipment, failure of utilities, fire, flood, or Acts of God interfere with work being provided, or

"2. An employee is not put to work, or is laid off after having been put to work, either at his own request or due to his own fault, the provisions of this Art. XI do not apply.

"E. The provisions of this Art. XI shall not apply in the event management shall give notice ten (10) hours in advance of a change in schedule or reporting time and that the employee scheduled or notified to report for work need not report."

Sec. 5. Bonus Fund for Armed Forces

The Board declines to pass upon this issue in light of the fact that such issue was withdrawn by the union from consideration of the tripartite panel at the time of the hearing.

Sec. 6. Sick Leave

The Board orders and directs that the following provision shall be included in the contract between the parties, in so far as the issue of sick leave is concerned:

"During the term of this contract, the company agrees that, without approval of the union, it will neither abolish nor amend the presently existing sick leave plan which reads as follows: 'All sick leave benefits shall be calculated on the length of service and figured on the following percentages:

"'6 Months and Less than 1 Year 30%
1 Year and Less than 2 Years 35%
2 Years and Less than 3 Years 40%
3 Years and Less than 5 Years 45%
5 Years and Over 50%'"

Sec 7. Night-Shift Differential

The request of the union that the company be ordered and directed to place in force and effect a 7½-cent per hour premium differential for the third shift is hereby denied.

The Board orders and directs the company to continue its present plan of paying a shift-premium differential of five cents per hour for all work performed on the second shift.

Sec. 8. Wages

The Board declines to pass upon this issue in light of the fact that the parties have executed and filed a National War Labor Board Form 10 disposing of this issue, such NWLB Form 10 being designated as No. 8-27,007.

Sec. 9. Rate Establishment and Adjustment

The Board declines to pass upon this issue in light of the fact that the parties have executed and filed a National War Labor Board Form 10 disposing of such issue, such NWLB Form 10 being designated as No. 8-27,007.

Sec. 10. Union Recognition

The Board orders and directs that the following provision shall be included in the contract between the parties, in so far as the issue of union recognition is concerned:

"A. The company recognizes the union as the sole and exclusive collective bargaining agent for all employees in the Dallas, Tex., plant, who were certified by the National Labor Relations Board as properly being within the bargaining unit at the election

held at the plant on the tenth day of July 1944.

"B. It is mutually agreed that, for the purpose of this contract, the term "Employee" shall be limited to those persons working for the company at its plant at Dallas, Tex., who were certified by the National Labor Relations Board as properly being within the bargaining unit set out in the consent election, namely: All regular production and maintenance employees at the Dallas Plant of the Company, including plant production clerks, but excluding office employees, night watchman, confidential secretaries, clerks, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action."

Sec. 11. Relationships

The Board hereby approves the agreement of the parties, in so far as the issue of relationships is concerned and orders and directs that the following provision shall be included in the contract between the parties:

"It is the intent and purpose of the parties hereto that this agreement shall promote good industrial and economic relations between employer and employee and shall set forth a basic agreement covering rates of pay, hours of work, and conditions of employment to be observed by and between the parties and shall prevent the suspension of work during negotiations between the parties in connection with such matters. It is understood and agreed that this agreement shall run in favor of and be binding upon all employees at the company's plant at Dallas, Tex., covered by this agreement."

Sec. 12. Seniority

The Board orders and directs that the following provision shall be included in the contract between the parties in so far as the issue of seniority is concerned:

"(a) It is agreed that seniority shall be upon a departmental basis in so far as this bargaining unit is concerned but that no employee shall be transferred from one department within the company to another except with his consent; provided, however, that when such employee is transferred, he shall retain his existing seniority in the department from which he transfers. Where employees have the necessary ability, skill, efficiency and physical fitness to do the job, length of service shall govern transfers, promotions, and increases or decreases in the working force.

"(b) Seniority shall terminate, due to any of the following causes:

"1. Resignation or quitting,

"2. Discharge for cause,

"3. Absence due to sickness or accident beyond a 12-month period, and

"4. Absence due to layoff extending beyond a six-month period, except that termination shall not apply until the end of the second six-month period, if the employee has notified the company in writing within thirty (30) days prior to the end of the first six-month period that he is available for employment.

"(c) Each employee laid off because of a reduction in force shall keep the company advised of his or her permanent address, and it is agreed that employees who are laid off because of reduction in forces are to be placed on a preferential list to be recalled when work is again available before new employees are hired. It is agreed that the company shall recall employees on the preferential list in line of seniority by mailing to their last known address notice of such recall by registered mail and shall at the time notify the union by mailing to it a copy of such notice. Employees must notify the company within three (3) days, if they intend to return to work unless within such time they actually report for duty.

"Where notice is given the company by employees, as herein provided, the subject employees shall have an additional five (5) days from the date they gave notice to the company by telegram or registered mail. The company shall have the right to hire temporary help during the period above provided for on recall of employees.

"(d) Leave of absence (without pay) not to exceed one (1) year shall be granted one employee for union work; provided, however, that, in addition to the above leave of absence the company shall, upon request of the union, grant one additional employee leave for a period not more than thirty (30) days for union work. Failure of the employee to report for work promptly at the end of his leave of absence without express permission from the company and without valid excuse or extension of time, shall constitute a break in continuity of service.

"(e) New employees will be put on probation for the first sixty (60)

days of their employment and no seniority shall be operative during such period. Probationary employees may be discharged by the company without regard for length of service, except that this provision shall not be used for the purpose of discrimination. At the end of this probationary period, employees shall begin to earn seniority and their seniority shall start from date of employment. Learners shall receive not less than the common labor rate.

"(f) The representatives of the company and the union shall, as soon as possible, but within fifteen (15) days after the signing of this agreement, meet and list the employees according to seniority and classification. Copies of such lists shall be furnished the union by the company. Such lists shall be revised every 90 days in like manner and copies furnished the union. Such provision shall consist of the elimination of those who are no longer in the employ of the company and by adding the names of new employees.

"(g) In the case of increase and decrease of forces, local union officers, grievancemen and assistant grievancemen shall be given preference."

Sec. 13. Grievance Procedure

The Board orders and directs that the following provision, which was agreed upon by the parties, in so far as the issue of grievance procedure is concerned, be included in the contract between the parties:

The Board further orders and directs that the parties shall supplement their agreement by the inclusion of those paragraphs hereinafter set out, and more specifically designated by an asterisk:

Sec. A *

"The term 'grievance' as used in this contract shall mean a complaint filed by an employee or by the union, alleging failure on the part of the company to abide by the provisions of this contract and the reasonable implications thereof in matters involving wages, rates, hours, and conditions of employment."

Sec. B

"The union will select four (4) employees, one of whom shall be the president of the local union, covered by this agreement, with whom the company will meet, upon request, for the purpose of settling grievances.

Sec. C

"*Par. 1.**—Should differences arise between the company and the union or the members employed by the company as to the meaning and application of the provisions of this contract or as to the performance by either party of obligations imposed by this agreement, there shall be no slow down, sit down, stoppage of work, or strike on the part of the union, nor shall there be any lockout on the part of the company, during the life of this agreement. Instead, an earnest effort shall be made by the company and the union to settle such differences in the following manner:"

"*Par. 2.*—Any employee who has a complaint shall first make an earnest effort to settle it with his foreman, with or without a grievance committeman, as he may choose.

"*Par. 3.*—If the complaint cannot be adjusted under the above procedure, the matter shall then be referred to the grievance committee who may take the complaint up with the plant management. Said referral of the complaint to the company shall be in writing and contain as full and complete statements of the matter as is practical.

"The company shall immediately make an investigation of any matter referred to them under this section and meet with the committee and shall, within three (3) days of receipt of such written notice, notify the grievance committee in writing of its decision in the matter.

"*Step 3.*—In the event the decision of the company is not satisfactory to the grievance committee, then the committee shall have the right, within three (3) days, to refer the grievance in writing to the staff representative of the union who will attempt a settlement with the vice-president of the company or his designee. The vice-president of the company, or his designee, shall, within five (5) days, notify the union in writing of his decision in the matter.

"In the event the decision of the vice-president, or his designee, is not satisfactory to the grievance committee, the same may be appealed to arbitration as herein provided.

"An appeal to arbitration shall be taken within five (5) days of the decision of the company or such decision shall be deemed to have been agreed to by the union. Such appeal shall be in writing, shall state the nature of the charge, and shall contain a brief summary of the position of the aggrieved employee, or em-

ployees, and the position of the company.

"After an appeal to arbitration is made, the grievance shall be submitted to an impartial arbitrator to be appointed by mutual agreement of the parties hereto. In the event the union and the company cannot agree on an arbitrator within five days, the Eighth Regional War Labor Board shall submit the names of three (3) men, of which number the union shall have the right to refuse one and the company shall have the right to refuse one. Should both the union and the company refuse the same proposed appointee, then one of the remaining two names shall be chosen by lot. If, during the life of this agreement, the Eighth Regional War Labor Board should be dissolved or cease to function, the matter of submitting three names from which to select an umpire shall be referred to the United States Conciliation Service and that body shall submit said three names and the same procedure shall be followed as is set forth above.

"*Par. 4 under Step 3 of Sec. C.**—The sole function of the arbitrator shall be to determine whether the company or union is correct with reference to the express application and interpretation of the agreement, but, in making such determination, he shall consider said provisions with the fair and reasonable implications thereof and shall have reasonable latitude in interpreting the agreement; but shall not change, amend, modify, supplement, or otherwise alter such agreement. If, after considering the matter, the arbitrator reaches the conclusion that the matter presented for arbitration is not covered by this agreement, he shall so state.

"*Par. 5.*—In all cases referred to the arbitrator, he shall render his decision in writing within five days from the date the case is placed in his hands unless an extension of time is mutually agreed to in writing by the union and the company. When a case is referred to the arbitrator, both the union and the company shall submit to him in writing such information as they may desire, bearing on the facts in the case, and he may make such additional independent investigation as he may deem necessary. It is expressly agreed and understood that such ruling and decision of said arbitrator shall be final and binding upon both parties.

"*Par. 6.*—It is understood and agreed that such reasonable expenses as are incurred by the above mentioned arbitrator, together with whatever reasonable fee is required by him, shall be borne by the company and the union jointly, that is, each of said parties is to bear said expenses equally.

*Sec. D **

"No grievance, the basis for which occurred prior to the effective date of this contract, shall be considered or be subject to adjustment."

*Sec. E **

"Any grievance, in order to be considered and be subject to adjustment, must be reported within five days from the date of its occurrence, except that where an employee has a grievance relating to a particular pay check the time within which he may report such grievance shall be fourteen (14) days instead of five (5) days."

Sec. 14. Health and Safety

The Board approves the agreement of the parties in so far as Secs. A, C, D, and E of the issue health and safety are concerned and orders and directs the inclusion of such provisions in the contract between the parties.

The Board further orders and directs that the agreement of the parties, as shown above, shall be supplemented by the inclusion of a provision to be designated as Par. B, thus making the provision read as follows in its entirety:

"A. The company agrees to use its best efforts to see that reasonably safe working conditions are maintained at all times in its plant.

"B. At the discretion of the company, employees covered by this contract may be required from time to time to take physical examinations, including X rays. When so required to take such examination, the examination shall be paid for by the company and shall be conducted by a physician selected by the company. Physical examinations by the company-selected doctors may be made a prerequisite for employment.

"Persons in the employment of the company, failing to pass medical examinations, when such examinations are requested by the company, may be disqualified for continued employment unless, within ten (10) days after such examination, request is made by the employee for further examination

by two physicians, one of whom is to be selected by the company. If, after the examination, any disqualifications are found, and subsequent condition or conditions can, in the judgment of the examining physicians, be corrected by treatment, the employee may, if his physical condition otherwise permits, continue in the employment of the company. If able to work, he will be permitted to resume his employment upon certification by the attending physicians. In the event of disagreement between the two physicians, they shall select a third physician, and the judgment of the majority shall prevail. In the event the majority of such physicians decide in favor of the employee, the employee shall be restored to his job without loss of seniority, or loss of pay. Each party shall, in such instance, pay the physician selected, and, in the event it is necessary that the two select a third physician, such third physician shall be paid by the company and the employee."

"C. The company will furnish a complete set of first aid supplies within easy access of all departments at all times and will have available on each shift an employee trained in administering first aid. The company will maintain clean and sanitary toilet facilities. The company will provide 100 lockers and hot and cold water will be supplied for showers. The company agrees to keep these facilities in a clean and sanitary condition, and the union agrees that employees using such facilities must observe all reasonable rules of the company necessary to maintain such facilities in a clean and sanitary condition, and the company is authorized to impose such disciplinary authority as it may deem necessary to require employees to observe rules relative to the maintenance of said facilities.

"D. The company shall furnish goggles for all employees doing grinding, chipping, or scaling, and goggles are available for any other work requiring goggles for safe operations. The company shall also furnish welders helmets, goggles and gloves, sand blast aprons, gloves and helmet, rubber boots and rubber aprons, where required to protect clothes, and gloves where they are deemed necessary. Employees who accept or who are required to use safety or protective devices shall be responsible for the reasonable care of same and their return. If such safety devices are not returned upon termination or request, the employee shall be required to pay the cost of the equipment.

"E. A safety committee will be set up by the union, consisting of three (3) members of the union who are employees of the company, and said committee will make recommendations and discuss safety measures with the company. It is expressly agreed and understood that any action taken or recommendations made by this committee shall be considered as purely advisory in their nature, and management shall not be in any manner bound by, or required to follow same.

Sec. 15. Bulletin Boards

The Board hereby approves the agreement of the parties on the issue of bulletin boards, and orders and directs that the following provisions shall be included in the contract between the parties in so far as such issue is concerned:

"A. The company will provide a bulletin board, in a conspicuous place, where the employees pass entering and leaving the building, for the exclusive use of the union. This bulletin board will have a glass door and will be kept under lock and key by the union. Bulletin board will be used by the union for the purpose of posting notices approved by the union and the management and shall be restricted to notices of union recreational and social affairs; notice of union elections, appointments and results of union elections; notices of union meetings and other such notices as are mutually agreed upon.

"B. No other notices or literature shall be posted on the bulletin board or distributed in the plant by the union without first being approved by the union and the superintendent of the company. All notices posted on the bulletin board shall be signed by a duly authorized official of the union.

Sec. 16. Military Service

The Board orders and directs that the following provision shall be included in the contract between the parties in so far as the issue of Military Service is concerned:

Sec. 1

"Any employee who enters into active service of the Armed Forces of the United States or the Merchant Marine, will be given a leave of absence for, and will accumulate seniority during such period of service, and upon the

termination of such service shall be offered reemployment at his previous position or a position of like status and pay unless the circumstances have so changed as to make it impossible or unreasonable to do so, in which event he will be offered such employment as may be available which he is capable of doing at the common rate of such work, provided he has not been dishonorably discharged, is physically able to do the work, and reports for work within ninety (90) days from the date of such discharge.

Sec. 2

"Should an employee be unable to work by reason of his physical disability resulting from his service in the Armed Forces, his application for reemployment may be made within ninety (90) days from the time his disability is ended.

Sec. 3

"Any veteran of the present war who was not employed by any person or company at the time of his entry into the service of the land or naval forces or the Merchant Marine of the United States and who is hired by this company after he is relieved from training and service in the land or naval forces or at the completion of service in the Merchant Marine, shall, upon having been employed for the probationary period, provided for all new employees in this agreement, and not before, receive seniority credit for the period of such service subsequent to Sept. 1, 1940, provided:

"(1) Such veteran shall apply for and obtain such employment within ——months from the time he is relieved from such training and service in the land or naval forces or the time of his completion of his service in the Merchant Marine; it being agreed that, if such veteran is unable to work by reason of his physical disability during said period of months, his application may be made within 90 days from the time his disability has ended.

"(2) Such veteran shall not have previously exercised this right in this or any other plant of the company.

"(3) Such veteran shall not be employed for the purpose of bringing about the displacement of another worker.

"(4) A veteran so employed shall submit his service discharge papers to the company, at the end of the aforesaid probationary period of employment, and the company shall place thereon, in permanent form, a statement showing that the veteran has exercised this right, such statement to be signed by representatives of the company and union.

Sec. 4

"A veteran's committee, consisting of equal representatives of the company and the union shall be set up in each plant. All problems relating to veterans that are not disposed of under the terms of this contract shall be presented to the veteran's committee. Under sponsorship of the veteran's committee, the company shall undertake a training program for disabled veterans so as to place them in jobs that are agreeable to the veterans.

Sec. 5

"An employee veteran, when reinstated, shall be entitled to his former rate of pay with accrued adjustments that would have been his had he continued in employment."

Sec. 17. Management

The Board orders and directs that the following provision shall be incorporated in the contract between the parties, in so far as the issue of Management is concerned.

"A. The management of the plant and the direction of the working forces, including the right to hire, suspend, or discharge for proper cause, transfer, assign work to employees, the right to relieve employees from duty because of lack of work, or for other legitimate reasons, and the right to plan, direct, change, and control plant operations is vested exclusively in the company, providing this will not be used for the purpose of discriminating against the union or for the purpose of overruling any of the other specific provisions of the agreement.

"B. All rights and privileges which ordinarily are vested in the management, except those which are relinquished by the provisions of the contract, shall continue to be vested in and be exercised by the company."

Sec. 18. Amendments

The Board approves the agreement of the parties on the issue of Amendments and orders and directs that the following provision be included in the contract between the parties:

"It is agreed and understood that this basic contract constitutes the full and complete agreement between the company and the union, and no amendments, alterations, modifica-

tions, supplements, or changes thereof shall be valid until and unless agreed upon by both parties, reduced to writing, duly signed by the proper officials of the company and the union, and attached to and made a part of this agreement."

Sec. 19. Terms of Agreement

The Board orders and directs that the following provision shall be included in the contract between the parties in so far as the issue of Terms of Agreement is concerned:

"This agreement shall be in force and effect from Dec. 5, 1944, such date being the date of certification to the National War Labor Board of dispute Case No. 8-D-376 (111-12646-D), and shall continue thereafter from month to month unless notice is given in writing of a desire to change, amend, modify, or terminate the agreement by either party to the other party thirty (30) days prior to the expiration of such period. Provided, however, wages may be reopened at any time upon thirty (30) days' written notice by either party to the other."

Sec. 20. Maintenance of Membership

The Board orders and directs that the following provision shall be included in the contract between the parties, in so far as the issue of Maintenance of Membership is concerned:

"(a) All employees who on Aug. 26, 1945, are members of the Union in good standing in accordance with its constitution and by-laws and all employees who become members after that date, shall, as a condition of employment, maintain their membership in the Union in good standing for the duration of the collective agreement in which this provision is incorporated or until further order of the Board.

"The Union shall, immediately after the aforesaid date, furnish the Regional War Labor Board with a notarized list of its members in good standing as of that date.

"The Union, its officers, and members shall not intimidate or coerce employees into joining the Union or continuing their membership therein. Neither shall the employer intimidate or coerce employees into withdrawing from or refraining from joining the Union.

"The final decision and determination as to whether any member of the Union shall withdraw from Union membership during the 15-day period herein provided, shall be the sole decision and determination of that member. Any member may record his decision to withdraw from the Union by giving written notice to the Union, the Company, and the Regional War Labor Board before the 15-day period expires. Receipt of such notice by the Regional Board shall be considered prima facie evidence of the employee's decision.

"(b) If a dispute arises as to whether an employee (1) was a member of the Union on the date specified above or (2) was intimidated or coerced during the 15-day escape period into joining the Union or continuing his membership therein, such dispute may be submitted for determination by an arbitrator to be appointed by the Regional War Labor Board. The decision of the arbitrator shall be final and binding upon the parties.

"(c) If a dispute arises as to whether an employee (1) has failed to maintain his membership in the Union in good standing after the aforesaid date, or (2) was intimidated or coerced into joining the Union after the aforesaid date, such dispute may be submitted for determination by an arbitrator to be selected in the manner provided by the contract of the parties or, if no such provision exists, to be selected by special agreement. In the absence of such contract provision or special agreement, the arbitrator will be selected by the Regional War Labor Board, on due application. The decision of the arbitrator shall be final and binding upon the parties."

Any party desiring to post or otherwise publish an official explanation by the National War Labor Board of the foregoing maintenance-of-membership provision may use the [standard] form of notice [and] procedure to be followed in administering the maintenance-of-membership provision, in the absence of some other procedure agreed to by the parties [12 War Lab. Rep. XXVIII; WCDS 321].

Sec. 21. Check-Off

The request of the union that the company be ordered and directed to place a voluntary binding or irrevocable check-off provision in the contract between the parties is hereby denied.

Sec. 22. Local Conditions

The request of the union that a provision be included in the contract between the parties, in so far as the issue of Local Conditions is concerned, is hereby denied; provided, however, that such denial is without prejudice to the rights of the respective parties

to present further evidence as to existing conditions presently in effect which are proper subject matter to be included in the contract between the parties.

Sec. 23. Discharge Cases

The Board orders and directs that the following provision shall be included in the contract between the parties, in so far as the issue of Discharge Cases is concerned:

"Any employee who is discharged or laid off for disciplinary reasons and who wishes a hearing concerning such discharge or layoff, may make a written grievance to his grievance committeeman or to the Union within three (3) working days from the date of discharge or layoff; otherwise said employee is hereby declared to have accepted such discharge or layoff without protest. Such grievance must be filed in writing with the company representative within twenty-four (24) hours after the three (3) day period, Sunday and holidays excluded. After such grievance has been filed with the company representative within the time and manner provided above, it shall then be handled as any other grievance, except that it will be unnecessary for the same to be first taken up with the foreman. If the company is found to be in error, such employee will be reinstated to his job without loss of pay or seniority."

II. The foregoing terms and conditions shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

The effective date of such agreement shall be Dec. 5, 1944, such date being the date of certification, or in accordance with the terms and provisions of Sec. 19, Part I hereof, or any other such date as the parties may mutually agree upon.

The termination date of such agreement shall be Dec. 4, 1945, such date being one year from the effective date as shown above, or in accordance with the termination provision of such agreement as set out under Sec. 19 hereof, or any other such date as the parties may mutually agree upon.

III. This order shall stand confirmed as the order of the National War Labor Board and, unless otherwise directed by the National War Labor Board, shall take effect fourteen (14) days from the date of mailing hereof, such date of mailing being Aug. 11, 1945, unless in the meantime a petition for review is filed with the Eighth Regional War Labor Board pursuant to the accompanying appeals procedure, in which event this order shall be suspended until disposition of the petition for review unless the National War Labor Board otherwise directs or has otherwise directed or the parties otherwise agree. However, the date of expiration of the escape period provided in Sec. 20 of Part I above, shall not be affected by the filing of a petition for review of that provision or any other provision of this order.

IV. Nothing in this order is intended to prevent the parties from agreeing upon the date when the order or any part thereof shall take effect, and, in the event a petition is filed with the Eighth Regional War Labor Board seeking review of portions of this order, either party may request the Eighth Regional War Labor Board to make the remaining portions of the order immediately effective.

Opinion No. 1 of the Board

COFFEY and POTTER, Public Members:—The public members submit herewith the following opinion in support of certain of the items contained in the directive order on which the vote was not unanimous.

SEC. 2. VACATIONS, PAR. D

Par. D provides that the company may select a period of ten weeks, not necessarily consecutive, during each year while the contract is in effect during which the employees shall not be entitled to take a vacation. The employer, in this case, has its busiest season during the summer, because it is during that time, under employer's peacetime operation, it is engaged in the manufacture and repair of cotton ginning machinery. The employer contended and the panel found it to be a fact that between May 1 and Sept. 1 of each year, the employer can ill afford to spare the services of the employees. On the other hand, the panel found that during the employer's busy season, the school vacation occurred. Since many of the employees of the employer have children in school, these employees would be deprived of the company of their families during the vacations, if they were unable to take their vacations during the school vacation period.

The majority of the panel, having considered these facts, recommended

that for a period of ten weeks, to be designated by the company, employees would not be permitted to take vacations.

In its comments, the employer stated that "the compromise recommended by the majority of the panel is as fair and reasonable as a compromise could be, and the company can, and will, undertake cheerfully to work out its schedule under this proposed substitute, if the Board itself should see fit to adopt such recommendations." The company pointed out further in its comments that decisions of the War Labor Board recognize that, in the final analysis, the vacation schedule shall be left to the discretion of management, in order that the operations of the plant may be carried on in an orderly and efficient manner.

While the public members agree with the view expressed by the company that the matter of scheduling vacations is a management prerogative, the public members could not lose sight of the fact that the summer time is the traditional time for the enjoyment of vacations. Neither could the public members ignore the reasonableness of the union's request that vacations be arranged so that employees having school children may be permitted to take their vacations while their children are out of school and can accompany the employees on vacation trips, if the employees so desire.

On the basis of the foregoing facts, and since the company offers no serious objections, the majority of the Board has concluded in this particular case that the equity of the situation justifies a departure from the customary policy of the Board in permitting employers to have the final decision as to the time of vacations.

SEC. 6. SICK LEAVE

The industry members of the Board have dissented from the action of the majority in including a sick leave provision in the directive order. The majority is aware of the fact that it is contrary to this Board's policy to direct a sick leave provision. In this case, however, the facts are that the action of the Board simply provides that the employer is directed to contract to do that which the record shows the employer has been doing in the past. The company proposes to continue its present sick leave policy, but to do so voluntarily and objects to incorporating the sick leave policy in the collective bargaining agreement.

The majority of the Board, in directing the inclusion of the sick leave policy in the collective bargaining agreement, did so on the basis of the announced policy of the National War Labor Board as contained in the opinion of Jesse Friedin, issued Dec. 30, 1944, in Tidewater Associated Company, Case No. 111-5206-D, 23 War Lab. Rep. No. 1, XII.

SEC. 7. NIGHT-SHIFT DIFFERENTIAL

The labor members have dissented because the majority refused to direct the company to pay a 7½-cent per hour night-shift differential for the third shift. The facts are, as found by the panel, that the company does not operate a third shift and presently has no intention of starting a third shift. The company presently pays a five-cent per hour differential for the second shift and the Board has ordered this practice continued.

The majority of the Board is of the opinion that it would be improper to order terms and conditions which are not applicable under the facts and feels that it would be proper for the parties to enter into collective bargaining with reference to the third-shift differential as, if, and when the company finds its necessary to start a third shift.

SEC 12. SENIORITY

Both labor and industry members of the Board have dissented as to certain sections of the seniority clause. The language ordered by a majority is based upon the language ordered by the majority of the panel. The panel majority supported its recommendation for departmental seniority as opposed to the union's request for plant seniority with the following language:

"The panel finds that the company has in the past operated upon departmental seniority. It appears in the evidence that there is no definite area or industry practice on this question, such appearing to be varied. It also appeared that thus far there have been no difficulties encountered by reason of the company using departmental senibrity.

"The majority of the panel is of the opinion that in instances where departmental seniority has been the practice there should be some definite reason for changing unless there is a definite industry or area practice in opposition to the present plan."

The majority of the Board, in ordering Par. g of Sec. 12 which provides for "super-seniority" for union officials, did so in the belief that it is now a well established policy for the National War Labor Board to include such provision in collective bargaining contracts when they are requested by the union. The union bases its request for so-called super seniority on the contention that local officials and grievancemen are in a position to be helpful in maintaining continuity of production, if they are permitted to remain on the job during a period of layoffs.

The majority has found there is merit to this contention.

SEC. 22. LOCAL CONDITIONS

The union had requested the inclusion of a provision reading as follows:

"This contract when executed, shall not be deemed to deprive the employees of any plant of any local conditions or practices which may be in effect as of the effective date of this contract and are more beneficial to the employees than the terms and conditions of the contract."

The majority of the panel, with industry dissenting, recommends the inclusion of the provision with minor modifications. The majority of the Board was of the opinion that the language requested by the union and the language suggested by the panel majority might possibly lead to dissension and grievances if such language were ordered included in the contract. The majority based this belief on the fact that the language requested as well as the language recommended, was vague and general. The majority being aware of the opinion in Tidewater Associated Company referred to above, concluded that, if the union would furnish the Board with specific lists of so-called employee's benefits, which are not included in the contract, it would be proper for the Board to direct the inclusion of benefits specifically named.

The labor member of the Regional Board agreed with the public members in this connection, and the majority voted to deny the union's request without prejudice. Industry has dissented.

The majority feels that, if the company has in effect certain privileges or benefits such as permitting employees to drink coffee on company time or some arrangements whereby the company and the employees share the expenses of sick and accident insurance, etc., such privileges and benefits could properly be included in the order, provided the Board knew specifically what these privileges and benefits actually are. It was for that reason that the order provides that evidence may be presented.

Opinion No. 2 of the Board

July 30, 1945

CHECK-OFF

COFFEY, Chairman:—In the subject case the panel, by majority vote, found that the union was entitled to "standard maintenance-of-membership and check-off provisions," and recommended that such provisions be ordered into the contract between the parties.

The panel's report came before the Board for consideration of this issue in an extraordinary night session after the Board had listened to a full afternon of debate on the subject of check-off between representatives of the United Steelworkers of America, the United Textile Workers, and representatives of companies having dispute cases with these unions pending before the Board.

In the Board session, labor moved for voluntary binding check-off which lost by a three to three vote. The writer then moved for voluntary revocable check-off, and this motion died for the want of a second. No further action was taken on the issue, due to the impasse which had been reached, and no form of check-off was ordered into the contract.

The writer is of the opinion that the panel, by its recommendation, intended that the union was to be granted voluntary revocable check-off which, in the absence of a showing of fact sufficient to support some other form of dues deductions, ordinarily and usually is ordered by this Board. The analysis of the Disputes Division reflects that the union had requested mandatory irrevocable check-off. Incidentally, I look upon the union's position in this case as a request for voluntary binding check-off and not mandatory irrevocable.

At this point a definition of check-off and the various kinds thereof may be helpful. A general and adequate definition of check-off is found in the United States Department of Labor Bulletin No. 686 entitled "Union Agreement Provisions" under the heading

"Check-Off," on p. 29, and which is as follows:

"The check-off is a method of deducting dues from the employees' pay at regular intervals, the amounts due the union for dues, fines, initiation fees, or assessments. Some agreements limit the check-off to regular dues only or specify a maximum amount which may be collected through the check-off. To facilitate the deduction, the union is usually required to furnish the employer in advance with a list of the amounts payable by each union member.

"The check-off provision may establish a general check-off for all employees where a closed shop is in force or otherwise by every union member. A more limited type of check-off provision, however, establishes the deduction only for those employees who file individual written authorization with the employer. The agreement may provide that the authorization holds until withdrawn by the employees or until the expiration date of the agreement."

Types of check-off, according to my understanding, are as follows:

1. Compulsory (Automatic)

All members of union. Individual has no choice but must agree to check-off or cannot hold job.

2. Elective or Voluntary

A. Revocable—(a) During an "escape" period only (irrevocable thereafter; all members of union). Individual may resign from union during a specified period and still hold his job but, if he remains in the union through choice, he must subscribe to check-off. This is commonly called voluntary binding check-off.

(b) At any time (for union members who authorize it). Individual signs authorization whereby he elects to have the company deduct dues until further notification instead of paying directly to union. This is commonly called voluntary revocable check-off.

B. Irrevocable—(For union members who authorize it.) Individual signs authorization whereby he elects to have the company deduct dues for the duration of the current contract and as a condition of employment cannot retract his authorization. This is commonly called the voluntary irrevocable check-off. (A modification is known as the "Marshall Field type" where it is linked with maintenance of membership.)

The company had contended before the panel that this union had not shown that a check-off provision is necessary and that no attempt had been made to compensate the company for the trouble and expense it would incur in carrying out a check-off provision. The panel found that the company had offered no evidence that the granting of a check-off provision would cause undue hardship or additional expense to it. There was no finding of fact that the union had offered any evidence on the issue, except that it was a reasonable and democratic union.

As a matter of fact, the record clearly indicates the union's position to be that there is no burden upon it to establish any reason for granting check-off. It says that the issue is "presently res adjudicata in that question was decided by the National Board in the Little Steel cases, 1 War Lab. Rep. 324." In the main, this is the same argument urged at the afternoon session during which the union based its case for voluntary binding check-off on the decisions of the National War Labor Board allowing this form of check-off in cases in which the United Steelworkers have been a party. In addition to the Little Steel cases, it cited the fact that the National Board allowed this type of dues collection in numerous other cases involving basic steel plants and also in some cases involving steel fabrication plants with which the United Steelworkers of America have contracts.

A careful examination of the cases cited by the union fails to convince me of the soundness of its position. In the Little Steel cases decided July 16, 1942, Chairman Davis, in a written opinion, expressly states:

"The check-off provision here added to the membership maintenance obligation has been very carefully weighed in the light of all the circumstances of this particular case."

He also stated,

"The voluntary binding check-off, on the basis of the special facts in this case and not as a precedent for other cases, protects the free choice of the worker."

Special facts to which reference is made in that case are best presented by again quoting the language of the Davis opinion, to wit:

"At present the company forbids the collection of dues on company

property and provides no facilities anywhere for this purpose. The problem is further accentuated by the difficulties and complications of many different nationalities and races among the workers, the widely separated and far-flung locations of mills and homes, and the limitations of transportation."

An examination of the other cases decided by the National Board shows that its decisions always have been based on the facts of the particular case. The definite and specific reasons have varied. Some of the more general have been noted, such as (1) a history of anti-union activity on the part of the company; (2) an established practice in the particular industry in the area; (3) a large group involved and the employees living in widely scattered areas and many nationalities being employed; (4) by agreement between the company and the union; (5) granted to a subsidiary because in contract of parent company; (6) on a showing of wholesale discharges under maintenance of membership; (7) on a showing that relationship had not been harmonious in the past; (8) where essential war production was disrupted by discharges under an existing maintenance-of-membership clause; (9) rival union activity; and (10) clause has been in prior contracts.

In the following cases a check-off was denied because no necessity for it was shown: Oliver Farm Equipment Company, 7 War Lab. Rep. 239; Allied Chemical and Dye Corporation, 7 War Lab. Rep. 227; Semet-Solvay Company, 7 War Lab. Rep. 123; Harshaw Chemical Company, 7 War Lab. Rep. 29; and Leviton Manufacturing Company, 7 War Lab. Rep. 32.

In a late case, P. Feiner & Sons, Inc., 24 War Lab. Rep. 14, the Regional Board's award of compulsory check-off was amended to apply only to employees submitting written authorization where a union steward is allowed one hour off with pay to collect dues, plant is small and company deems this time adequate, and voluntary check-off is shown to be satisfactory.

Referring again to the union's position in the instant case, which is in effect that voluntary binding check-off should be granted it as a matter of right, it may be said that, in my opinion, such position is not only contrary to all authority on the subject but invades the province of this Board as a fact finding agency of the National War Labor Board. The same should be said of the contention that the subject union is entitled to this form of check-off in every case in which it is involved because the National Board ordered it in the Little Steel cases. If that position is sound, the union has but to get the National Board to say so, and this Board will follow its determination but, at this writing, I do not understand this to be the National Board's policy.

Furthermore, I do not agree with the charge which is made that this Board does not follow National Board policy where the subject issue is involved. This Board has consistently based its decisions on the facts reflected by the record in each individual case. That is my understanding of National Board policy on this as well as any other matters in dispute. Generally, this Board grants voluntary revocable check-off (1) where maintenance of membership is ordered, (2) no showing is made by the company that an undue hardship will be worked on it, and (3) the union fails to show facts sufficient to entitle it to greater union security in this regard.

To my knowledge, this policy has never been questioned nor reversed by the National Board. This type of check-off generally has been acceptable to organized labor and management. It seems to have accomplished to a full measure the desired aims of both and there yet has to be demonstrated to my satisfaction any good reason why this Board should depart therefrom.

There seems to be the mistaken impression that the Board arbitrarily orders voluntary revocable check-off without regard to the facts of the case, but the record will show that in some cases no form of check-off has been ordered, while in others, the Board has ordered a type of check-off other than voluntary revocable where, in its judgment, the facts warranted.

In conclusion, I want to stress that the views herein expressed on the policy of this Board are my personal views and are not to be construed as reflecting the thinking of the other Board members on the subject.

Dissenting Opinion of Labor Members

CHECK-OFF

July 31, 1945

CURTIS and JAMES, Labor Members:—The subject case is one of many steel industry cases pending before the Eighth Regional War Labor Board or on reconsideration and/or appeal be-

fore the National Board. Since the issue in the subject case is similar to that which has arisen in other cases on the matter of check-off, it is felt that a review of the check-off policy of the Eighth Regional War Labor Board should be undertaken at this time.

A check of of the records indicates that in 43 dispute cases before the Eighth Regional Board in the past two years, the Board has ordered voluntary revocable check-off with but few exceptions so that it may be assumed that the "standard" form of Eighth Regional Board check-off is the voluntary revocable type.

Of 12 steel industry cases studied, the Eighth Regional Board has ordered the voluntary check-off in 9 of them, 5 are currently on appeal, 2 are in noncompliance (Mosher Steel), and one is being enforced by the presence of the United States Army (Hughes Tool). In the Bethlehem Supply case, No. 8-D-356 (111-12172-D), and in the Continental Can case, No. 8-D-434 (111-12085-D), the Regional Board ordered voluntary binding check-off or what is sometimes called the "Little Steel" or "Marshall Field" type. In the United States Steel Products case, No. 8-D-460 (111-15399-HO), the Board ordered compulsory binding check-off because the parties had stipulated that, if maintenance of membership were ordered by the Board, the compulsory type of check-off was requested.

In the instant case the panel, by majority vote, recommended "standard maintenance of membership and check-off" be ordered into the contract between the parties. In the Board session, labor moved for the voluntary binding check-off provision (as proposed by the union) which resulted in a tie vote, with industry members voting against the motion, labor members voting for the motion, and public members divided. Regional Board Chairman, A. Langley Coffey, moved for voluntary revocable check-off and the motion died for the want of a second.

The union's proposal in the instant case is the voluntary binding check-off provision offered, word for word, from the Basic Steel directive of November 1944.

This proposal was before the panel at the time that it formulated its recommendation and, since the maintenance-of-membership provision is also taken verbatim from the Basic Steel directive, and is a "standard" form, it follows (in the absence of any proposal by the company at that time) that the voluntary binding check-off was contra-indicated.

Obviously, the "standard" form of check-off ordered by the Regional Board in most cases is at variance with the National Board policy on the accepted standard form of check-off, which is clearly defined, by implication at any rate, in the Basic Steel directive of Nov. 25, 1944, and in other subsequent decisions of the National Board, particularly in steel cases. (The nonintegrated Steel Casting Company case, 24 War Lab. Rep. 52, involving 12 companies.)

The Basic Steel decision (Case No. 111-6230-D) states in Sec. XII (maintenance of membership and check-off) to wit:

"(b) The following standard maintenance-of-membership and check-off clauses shall be incorporated in agreement between the parties:"

And then follows the precise wording which has been proposed by the union in the instant case, as well as in all other steel cases pending before the Board.

At a recent public hearing before the Regional Board on the issue of the check-off, many pertinent facts were developed. A summary of these facts indicates that:

A study of National Board policy on the issue of check-off reveals that, between October 1942 and May 1943, the Board ordered in 71 cases as follows: 36 cases, voluntary binding check-off; 30 cases, voluntary irrevocable; and 5 cases, voluntary revocable.

Recent actions of the National Board (December 1943 to December 1944) shows: 3 cases, compulsory irrevocable; 16 cases, voluntary binding; 6 cases, voluntary irrevocable; and 3 cases, voluntary revocable.

Policies of some of the other Regional Boards may be stated briefly as follows:

Region X

Out of 16 cases tabulated, 12 cases were voluntary binding and 4 cases voluntary irrevocable.

Region IV

It is reported that: "It is the policy of this Board to award a maintenance-of-membership clause with a 15-day escape period and automatic irrevocable check-off of union dues and initiation fees; * * * industry members

generally dissent on the maintenance-of-membership clause but many of them regularly support the check-off provision."

Region III

"This Board will order maintenance of membership almost as a standard practice. It has refused to do so only when union irresponsibility is clear. This practice, until the last few months, has almost invariably been accompanied by a voluntary irrevocable check-off. However, in the last few months, I am advised by the review officer of the Disputes Division [that] the Board has, in a majority of cases, ordered a compulsory check-off. The reason for this change of attitude is the result of the feeling by some industry members that, if the Board is going to order maintenance of membership, it eliminated a great deal of trouble to have a compulsory check-off."

Similar statements of policy have been received from Region I, Region VII, Region V, and others. This summary serves to emphasize the fact that the Eighth Regional Board policy seems to be at variance not only with National Board policy but also, in most instances, with the policies of most Regional Boards as well. It is significant that the pattern in steel for the check-off has likewise been adopted on an industry-wide basis in rubber, meat packing, and non-ferrous mining industries.

If the above data were to be disregarded, and, if indeed all cases are to be judged on a case to case basis, the following factors appear in the instant case:

1. The union is responsible, democratic, and efficient.

2. No assessment has yet been made against members of the union.

3. At present the company forbids collection on company time and property.

4. Company makes deductions for several other authorized items.

On the basis of these and similar factors which are present in this case and inherent in the steel industry generally, whether in basic production or secondary fabrication, voluntary binding check-off is indicated.

However, the most compelling argument against the voluntary revocable check-off (assuming that the facts in the given case merit ordering any type of check-off at all) is that this form of check-off is inconsistent with the maintenance - of - membership provision. The status of members of the union who are delinquent in the payment of dues under the maintenance-of-membership provision frequently creates difficulties. In the Bethlehem Steel Company case (2163-CD-4), a dispute arose regarding the status of many employees under the maintenance-of-membership provision. The Board approved a procedure which set out that, "If the employee has failed to place himself in good standing, then the Union may officially request in writing that the employee be discharged by the Company in accordance with the obligations under the directive order of the Board."

A member who pays his dues on a voluntary revocable basis may express well founded resentment against a condition which is beyond the control of the union (for instance, in protesting stabilization policies of the National War Labor Board) by withdrawing his authorization, with the result that the union may exercise its rights and request a dismissal of the member who refuses to pay his voluntary obligations. This creates confusion and imposes a problem on union and management alike which tends to rupture otherwise good relationships.

Members of a union are parties to the bargaining agreement and, having enjoyed benefits of organization, it is a thoroughly American custom that they help pay their share of the cost of union operations.

In the Ranger Aircraft Engine case, No. 24, 1 War Lab. Rep. 290, June 12, 1942, the Board overruled the panel which had voted two to one for voluntary revocable check-off. In a ten to two decision, the Board declared that the equivalent of an organizing campaign with the attendant loss of production time which (despite everyone's best efforts) such a campaign usually brings about.

It is also a fact that, prior to the war, the check-off of union dues was not a general feature in industrial relations. The supposition that the check-off (that is, this type of check-off) has not been an issue in collective bargaining relationships to date is misleading. Many problems involving voluntary revocable check-off have arisen. The Board is not aware of the existence of these problems simply because most of them have been dis-

posed of under grievance machinery in the contracts.

In the reconversion and postwar periods, competing forces will multiply the opportunities for industrial strife. The aim of all should be to eliminate as many sources of friction as possible while a measure of control over these forces still exists. It is the responsibility of the Board to settle disputes, not to create them by any policy which obviously lends itself to disruption of good industrial relationship as does the present blanket policy of ordering voluntary revocable check-off in dispute cases.

Dissenting Opinion of Employer Members

July 30, 1945

BELLOWS and CERVIN, Employer Members: — The undersigned respectfully dissent from the action of the majority of the Board on the following issues or parts of issues and indicate briefly the basis for such dissent as to each issue:

MILITARY SERVICE

The Congress of the United States has seen fit to legislate on the rights and privileges which should be extended to returning veterans and, where deemed necessary, has amended its previous action in certain respects. Having done so, it is the fixed opinion of the undersigned that the sole function of the War Labor Board should be to put into effect such acts of Congress. Even a casual examination of the military service clause which the majority has ordered included in the present contract will show that it far exceeds any benefits Congress has conferred on returning veterans and places this Board in the attitude of granting mere social gains by fiat rather than by legislative action.

Secs. 1 and 5 of the union's proposal fully and adequately cover the subject and are the only clauses which should have any proper place in this contract.

Sec. 2 of the proposed clause places no time limit on the right of a disabled veteran to apply for reinstatement other than that his application must be made within 90 days from the date his disability is removed. In the event of a lingering disability, this clause as written would require the company to take back a disabled veteran 5, 10, or even 15 years after hostilities have ceased. Such clause completely loses sight of the fact that the War Labor Board was designated and created merely to function during the present emergency and inherently has no power to decree measures which may extend far into the future.

Sec. 3 decrees that a returning veteran who may be employed by this company shall be accorded seniority rights for the length of time he was in the military service, although he had never previously been employed by this company. Such a provision is palpably unfair to the present employees of the company and will doubtless afford a fruitful source of grievances. No sound reason was advanced in support of this provision and none occurs to the undersigned. If this right was deemed proper, Congress would doubtless have made it a part of the law, and it is not proper for this Board to seek to require the company, as a matter of contract, to accept a burden and obligation which had no foundation in the law.

Sec. 4 clearly has no proper place in any labor contract. While it may be a violent presumption, it is still the belief of the undersigned that the guiding purpose of the War Labor Board should be to assist the parties in arriving at a clear, concise, and definite agreement which will control their relationship for the duration of the contract. Despite the fact that this contract, when directed to be put into effect, should be a complete and workable agreement, Sec. 4 purports to set up a "veterans committee" for the "extra curricular" purpose of dealing with "all problems relating to veterans that are not disposed of under the terms of this contract." If any such problems exist and have any proper place in the contract, they should be covered by its terms. Certainly, this Board has no power or authority to decree that an agency be created to handle matters outside of this contract. It is also deemed improper to use the vague and indefinite language about a training program for disabled veterans. Congress has undertaken to provide facilities for rehabilitating these disabled veterans, and, if such program is not believed to be adequate, the law itself should be amended. Certainly an individual employer, as a matter of binding contract, should not have this Board order that it "shall undertake" such a program.

Sec. 5, by the ill advised use of the term "with accured adjustments," is susceptible of the construction that

the returning veteran shall receive merit increases although he has not been present and has not passed the tests which would entitle him to such increases. This phrase should be eliminated or clarified.

No decision has come to the attention of the undersigned where a similar military service clause has been ordered by the National Board.

DEFINITION OF GRIEVANCE

The undersigned are definitely of the opinion that it is absolutely indispensable to the orderly administration of any labor contract for the term "grievance" to be accurately defined. This is particularly true where, as in the present contract, arbitration is made the final step in the grievance procedure. By the use of an arbitrator, matters become subject to disposition by a third party who has neither management's knowledge of the background and details of the case nor any responsibility for the result of the decision made. Unless a grievance is accurately and correctly defined, the arbitrator may, and probably will, be called upon to pass upon matters removed from the normal and proper field of collective bargaining. The National Board has long recognized the necessity for such a definition. In the Aluminum Company of America case (No. 111-18), 12 War Lab. Rep. 446, Dean Morse said:

"The National Board is unanimously of the opinion that the Regional War Labor Board's order should contain a clause defining and limiting the matters which may be taken up and finally referred to arbitration under the grievance machinery. Consequently, the Board instructed the addition of the following clause as one of the provisions of the Regional Board's order relating to grievance procedure: 'A grievance shall include any difference of opinion or dispute between representatives of the company and any employee or union representative regarding interpretation or operation of any provision of this agreement.' "

The decision in the above case has been consistently adhered to by the National Board in subsequent decisions, such as LeWittes & Sons, 15 War Lab. Rep. 454; Fairchild Engine and Airplane Corp., 16 War Lab. Rep. 633; Allied Chemical and Dye Corp., 21 War Lab. Rep. 12; Mid-States Gummed Paper Co., 22 War Lab. Rep. 89; Owosso Metal Industries, Inc., 22 War Lab. Rep. 294.

An examination of the definition tendered by the company on p. 6 of its proposal will show that it is in substantial compliance with the above quoted definition. The action of the majority of this Regional Board in tacking on to said definition the language: "And the reasonable implications thereof, in matters involving wages, rates, hours and conditions of employment" goes far toward destroying the purpose, and effect, of the definition and was obviously added for the purpose of broadening the definition when no necessity therefor existed.

The undersigned likewise dissent from the action of the majority of the Board in attempting to broaden the description of the powers of the arbitrator. As early as the case of General Motors Corp., 3 War Lab. Rep. 348, at 355, the National War Labor Board ordered the inclusion of the following language:

"The umpire shall have no power to add to or subtract from or modify any of the terms of this agreement or any agreement made supplementary thereto. Any case appealed to the umpire on which he has no power to rule shall be referred back to the parties without decision."

Other holdings could be cited and no departure therefrom by the National Board is known to exist. The action of the majority in interpolating into the language tendered by the company the language: "But in making such determination shall consider the provisions with the fair and reasonable implications thereof, and shall have reasonable latitude in interpreting the agreement" is unnecessary, is confusing, and tends to destroy the purpose and effect of the remainder of the paragraph, and should be deleted.

MAINTENANCE OF MEMBERSHIP

The undersigned likewise dissent from the action of the majority in including the standard maintenance-of-membership clause. Since the policy of the National War Labor Board has become fixed with regard to the inclusion of such a clause, no effort will be made to present arguments against the inclusion of any clause at all. However, the undersigned do feel that the increasing unrest which is manifest all over the United States should make it manifest that now is a propitious time to consider certain modifications of the clause. It is strongly

urged that such clause should define the term "good standing" and that same should be limited by definite standards and not be left to the whim or caprice of the union. Likewise, some affirmative act upon the part of the employee signifying his willingness to remain in the union should be required. Mere failure to resign within the 15-day escape period has been definitely demonstrated not to be adequate.

The undersigned strongly urge the substitution of a well considered mutual security clause in place of the manifestly one-sided maintenance-of-membership clause.

PREFERENTIAL SENIORITY

The undersigned firmly believe that no sound basis exists for granting preferential seniority to officers, grievance men, and assistant grievance men of the union and are opposed to any such grant as a matter of principle. Further, the proposed clause has two particularly objectionable features. In the first place, it is made to apply in cases of increases in force as well as decreases in force. In order to maintain continuity in [the] office in the administration of the affairs of the union, some justification might be found for extending preferential seniority to union officers in the event it became necessary to lay off men. However, where there is an increase in forces, the standard tests, namely, length of service and ability to perform the work, should be applied without exception. In the second place, the proposed clause extends not only to the officers but to the grievance men and assistant grievance men. No provision is made in the grievance procedure for any such classification as assistant grievance men, but this clause openly invites the union to create such a classification, without any limitation as to the number. By such a device, the union can extend preferential seniority to an unlimited number of its members. If such a valuable right is to be extended at all, it should unquestionably be limited to the duly elected officers of the local union.

TERMS OF AGREEMENT

The undersigned respectfully dissent from the action of the majority on this clause and particularly to that portion of same which permits the question of wages to be reopened at any time upon 30 days' notice. This record reflects that the issue of wages was referred back to the parties by the panel for further collective bargaining, and, as a result of such bargaining, the parties were able to and did agree upon all job titles, job descriptions, and wage rates. A joint Form 10 was submitted to, and was passed upon by, the Wage Stabilization Division. This being true, it is the fixed conviction of the undersigned that the question of wages should be set at rest for the duration of the contract or at least should be limited to a reopening only in the event there is a change in the national policy. Such has been the holding of the National Board in cases like Mason & Hughes, Inc., 24 War Lab. Rep. 183; Curtiss Wright Corp., 25 War Lab. Rep. 83.

SICK LEAVE

Notwithstanding that the panel report found that it was not the practice in the industry and area to grant sick leave and recommended that this demand of the union be denied, the majority of this Regional Board has ordered that the present sick leave plan, without alteration, be continued in force for the duration of the contract.

It has been the fixed policy of this Regional Board and of the National Board to deny sick leave in dispute cases, the latest holdings being Iron Ore Cos., 23 War Lab. Rep. 497; American Steel Foundries, 24 War Lab. Rep. 52; Curtiss Wright Corp., 25 War Lab. Rep. 83. The only exception to this rule being that such a plan would be put into effect where mutually agreed to by the parties.

While it is true that in cases such as Reuben H. Donnelly Corp., 15 War Lab. Rep. 551, and Glenn L. Martin Co., 23 War Lab. Rep. 373, existing sick leave plans were ordered continued in force for the duration of the contract, in each of those cases the company itself had a fixed and definite plan. In the Donnelly case the company had followed the practice of granting one week's sick leave for each year's service not to exceed a total of four weeks. In the Glenn L. Martin case, the sick leave benefit was confined to three days' pay in any one calendar year. In both cases the plan was modest in scope, was fixed and definite in its terms, and could be enforced without giving rise to disputes. In the instant case, we are informed that the source of these funds is the "Munger Benefit Fund," as distin-

guished from company funds, and its administration is left to the discretion of the manager of such funds or to the chairman of the Board of Trustees. It is not, and never has been, a part of the pay of these employees nor has it ever been figured as a part of the company's overhead or wage structure. On the contrary, Mr. Munger, the founder of the business, created a trust fund to be administered under the terms of such trust and as a purely philanthropic measure. To say that this Board, as a matter of contract right, can reach into these trust funds and compel them to be administered under a labor contract would far exceed the holding in any previous decision by the National War Labor Board. The plan was cited at the hearing merely as evidence of the attitude of the company toward its employees in general and as proof of the fact that it had voluntarily assumed a paternalistic attitude toward them. To continue such a practice in force against the wishes of the company and to subject these funds to the control of an outside labor organization would certainly be foreign to any purpose for which the trust was created.

It is believed that a serious mistake will be made, if the action of the majority of the Regional Board is upheld. Full details of the source of these funds and of their method of administration were not fully developed at the hearing as it was not contemplated that such a plan could or would be construed as constituting a sick leave plan susceptible of forming the basis of contractual rights. Before final action is taken on this matter, certainly the company should be accorded the opportunity to make full disclosure of the facts.

Because of the source and nature of these funds and their method of administration, it is urged that any attempt to incorporate such plan in the contract would necessarily provoke endless disputes and be a constant source of grievances.

ATLAS POWDER CO.—

Decision of National Board

In re ATLAS POWDER COMPANY, WELDON SPRINGS ORDNANCE WORKS [Weldon Springs, Mo.] *and* UNITED GAS, COKE AND CHEMICAL WORKERS OF AMERICA, LOCAL 222 (CIO). Case No. 111-6033-D, May 14 and June 1, 1945 (made public Aug. 8, 1945).

Amending 21 War Lab. Rep. 60.

LAYOFFS—Layoff pay in lieu of notice denied

Employees are not entitled to layoff pay when company fails to give two weeks' layoff notice, where company has practice of giving such notice whenever possible but is unable to guarantee notice since property is government owned and production may be stopped on very short notice.

For other rulings see Index-Digest 90.100 and 161.700 in this or other volumes.

PREMIUM WAGE RATES—Night-shift bonus—Continuous operations

Employees on continuous, rotating shifts are entitled to night-shift premiums of four cents on the second shift and six cents on the third shift. Regional Board's order granting premiums of five and ten cents an hour, respectively, is amended accordingly.

For other rulings see Index-Digest 140.575 in this or other volumes.

GRIEVANCES—Furnishing of special work clothes

In addition to providing that company should continue past practice of supplying certain work clothes, contract should provide that any contention that such practice is not adequate to protect employees is subject to grievance machinery. Regional Board's order making subject to grievance procedure "questions concerning the propriety of furnishing the clothing" is amended accordingly.

For other rulings see Index-Digest 60.860 in this or other volumes.

EMPLOYEE BENEFITS—Continuance of past practice

Regional Board's order denying union's request that preemployment physical examinations be given on company's time is amended to specify that company should not discontinue its present practice of giving employees periodic medical examinations on company time.

For other rulings see Index-Digest 49.001 in this or other volumes.

Decision of June 1, 1945—Majority decision of Board amending decision of Regional Board VII (Kansas City). Public members concurring: George W. Taylor, Nathan P. Feinsinger, Lewis M. Gill, and Lloyd K. Garrison. Labor members dissenting on acceptance of company's petition on night-shift bonus: Van A. Bittner, Carl J. Shipley, Robert J. Watt, and J. A. Brownlow. Employer members dissenting on Pars. I and II: Earl Cannon, Walter Knauss, S. Bayard Colgate, and Fred Climer.

Decision of May 14, 1945—Majority decision of Board amending decision of Regional Board VII (Kansas City). Public members concurring: Nathan P. Feinsinger and Lewis M. Gill. Employer members dissenting on acceptance of union's petition on termination pay and Pars. I-B and III: George Bahrs and Charles S. Roberts. Labor members dissenting on Pars. I-A and II: Delmond Garst and J. A. Brownlow.

Directive Order No. 2

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted, in so far as it relates to the issue involving night-shift differentials, the petition for review filed by the company in the above entitled case and having reviewed the merits of the case with respect to this issue and having considered further that part of the said petition which relates to shift schedules, hereby takes the following action:

I. Night-Shift Bonus. Par. 23 of the Seventh Regional War Labor Board's interim directive order of Dec. 13, 1944 [21 War Lab. Rep. 60], is hereby modified to read as follows:

The Board hereby directs the premium payment of four cents per hour for the second shift and six cents per hour for the third shift.

II. Shift Schedule. The petition for review with respect to this issue is hereby denied.

III. The terms and conditions of employment set forth in the Seventh Regional War Labor Board's interim directive order of Dec. 13, 1944, as modified by the National War Labor Board in its directive orders of May 14, 1945, and June 1, 1945, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intentions of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Directive Order No. 1

I. By virtue of and pursuant to the powers vested in it by Executive Order 9017 of Jan. 12, 1942, the Executive Orders, directives, and regulations issued under the Act of Oct. 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board, having accepted, in so far as it relates to termination pay or termination notice and physical examinations, the union's petition and, in so far as it relates to wearing apparel and physical examinations, the company's petition for review of the Seventh Regional War Labor Board's interim directive order of Dec. 13, 1944, and having reviewed the merits of the case with respect to these issues, hereby orders:

A. Termination Pay or Termination Notice. The Regional Board's directive order of Dec. 13, 1944, is affirmed in this respect and adopted as the order of the National War Labor Board.

B. Wearing Apparel. Par. 14 of the said directive order of Dec. 13, 1944, is modified to provide that the company shall continue its practice and that any contention that the past practice is not adequate to provide the necessary protection, where safety or security is involved, may be made subject to the grievance procedure.

C. Physical Examinations. Par. 15 of the said directive order of Dec. 13, 1944, is modified to read as follows:

The Board hereby directs that preemployment physical examinations shall not be made on the company's time, but subsequent physical examinations required by the company shall be on the company's time, and, further, with regard to the time interval between physical examinations, such question is referred to the parties for negotiations.

II. The remainder of the union's petition for review is hereby denied.

III. The company's request for an oral hearing is denied.

IV. Action on the issues involving shift differentials is deferred pending further consideration by the Board.

V. Subject to the provisions of Pars. I and IV above, the terms and conditions of employment set forth in the Seventh Regional War Labor Board's directive order of Dec. 13, 1944, shall govern the relations between the parties and shall be incorporated in a signed agreement reciting the intention of the parties to have their relations governed thereby, as ordered by the National War Labor Board.

Report and Recommendations of the Panel *

Apr. 19, 1944

ISSUES

[The issues in dispute are:].

1. Closed shop, maintenance of membership, and compulsory check-off;
2. Severance pay for those entering armed forces and termination notice or pay for those discharged;
3. Hours of work and overtime pay;
4. Wage increase;
5. Changing clothes on company time;
6. Wearing apparel to be furnished by company;
7. Physical examinations by the company;
8. Allowance for travel time;
9. Elimination of dormitory fee;
10. Wage inequalities;
11. Sick leave;
12. Safety and security;
13. Night-shift premium; and
14. Retroactivity and term of contract.

1. Closed Shop and Check-off

The company and union fail to agree upon the question of whether the employees in the unit certified shall be compelled to join the union or whether, once having joined, such employees must retain membership therein as a condition of employment. It is further disputed whether the company should assume the obligation of collecting union dues through a compulsory check-off.

Union's Position

The union is willing to agree to a no-strike clause in any future contract. To render such contractual obligation effective it contends a closed shop is imperative. While no maintenance-of-membership contract exists, the union insists it is necessary to maintain uninterrupted production of war materials. The prevailing check-off is ineffective due to the large number of employees. The difficulty is further complicated by the varying shifts employed in this plant and the scattered domiciles of the employees.

Company's Position

The company claims a consistent policy against a union shop or a maintenance-of-membership clause. While it is willing to continue the voluntary check-off system, it sees no need for a compulsory check-off. The time, trouble, and expense connected with a compulsory check-off system are obligations which the company refuses to accept.

Discussion and Recommendations

In view of the consistent reluctance of the National War Labor Board to enjoin a closed shop against the objection of the employer, it would seem that the prevailing Board policy [should] be followed in this instance. However, in the interest of increased efficiency and to obviate future stoppages, the panel suggests that the company be directed to negotiate a contract with the union embodying a maintenance-of-membership clause provided that the Weldon Springs Ordnance plant resumes operation within 30 days of the Board's order and further subject to the considerations discussed under Issue 14 of this brief. It furthermore recommends that the above clauses be accompanied by a 15-day escape period for any employee of said unit. In offering this recommendation, the panel refers to a similar opinion formulated in the Atlas Powder Company and International Brotherhood of Electrical Workers of Americ , Locals 1 and 2, Case No. 111-1-C, Oct. 19, 1943 [11 War Lab. Rep. 608]. It was there stated that, despite a very small percentage of employees involved, maintenance-of-membership should be granted.*

To enable the maintenance-of-membership policy to effect its desired purposes, a compulsory irrevocable

* Ed. Note: For background of the case and discussion on Issue 14, Retroactivity and Term of Contract, see 21 War Lab. Rep. 65.

* Later decisions of the National Board, however, indicated that membership maintenance would be the standard award in union-security disputes in the absence of some definite reason for denying the grant of the clause. Denial of the clause in the more recent cases [seems] to be based almost exclusively on the ground that the union involved was irresponsible, as evidenced by strikes in violation of labor's no-strike pledge. (Labor Relations Reporter, Dec. 12, 1943, 13 LRR 488-489.)

check-off should be granted. Despite the company's permission to collect dues on the premises, the relative location of the plant to the workers' homes, the number of workers entailed, and the varying schedules of those employed seem to render the collection of dues by the union unusually difficult. In the case of United States Cartridge Co., St. Louis Ordnance plant and United Electric Radio and Machine Workers of America, Local 825, Case No. VII-D-127 (111-1446-D), Dec. 10, 1943 [42 War Lab. Rep. 616], the following was stated:

"Granted compulsory irrevocable check-off clause where union claims practically impossible to have stewards collect dues from over 14,000 employees who operate on varying schedules."

In the unit under consideration, there were some 1,150 workers, living from 10 to 60 miles from the plant and operating on varying schedules. The panel believes the reasoning in the United States Cartridge case, above cited, thus applies.

In present situation company admits its relations with the union are and always have been amicable.

2. Severance Pay and Termination Pay

The company and union fail to agree on the amount of pay which should be given to those entering the armed services of the nation. At the time of the negotiations, the company had in operation a plan whereby employees having 6 months of continuous service received 173 hours of regular base pay; those employees having 18 or more months of continuous service received 346 hours' wages at regular base rates.

Union's Position

The union demands that this severance pay be liberalized to the effect that employees having 6 but less than 12 months of continuous service shall receive 173 hours' wages at regular hourly rate; while employees having 12 or more months of continuous service shall receive 346 hours' wages at their regular hourly rate.

The union also demands that employees being laid off shall be given either two weeks' notice of such layoff or, if not given such notice, that they receive two weeks' pay.

The union believes that the prevailing pay for those entering military service, whether by enlistment or draft, is little enough recognition given such employees. A bonus as well as accrued vacation pay is given to salaried employees entering the armed services. The union contends hourly workers should be given the same consideration.

Relative to notice of discharge or pay, the union submits that the company, during the course of negotiations prior to this hearing, had offered to give one week's notice prior to a layoff. Since February 1943, the company has given such notice in some instances but not in all instances. In requesting that all employees in this unit be given two weeks' notice prior to discharge or two weeks' pay, the union argues that this practice prevails generally in most industries. They further contend that, since salaried employees receive termination pay, hourly workers be given the same consideration.

Company's Position

In view of the approval of the prevailing severance pay plan by the War Department Wage Administration Agency, the company feels that this plan is justified. It further contends that the current plan is more liberal than that usually followed by industry in general. The granting of such severance pay is a gift in the eyes of the company and a matter over which it alone has the right of jurisdiction subject to the approval of appropriate government agencies. As long as such a plan does not conflict with public policy, law, or Executive Order, the company contends it should not be the subject of further review or determination by the War Labor Board. Furthermore, severance pay would be equivalent to an increase in pay and would aggravate the tendency of rising prices.

In regard to notice of discharge, the company states that the first such layoff occurred on Feb. 3-4, 1943; that, since that time, the company has given from one to two weeks' notice of layoff. Admittedly the policy of giving such notices is not a consistent one, due, the company submits, to the fact that production is ordered stopped by the War Department at times on very short notice.

Discussion and Recommendations

In the opinion of the panel, severance pay is a gratuity. As such, it is a practice to be encouraged but not to be ordered. On Dec. 20, 1943, the National War Labor Board reversed the decision of the Regional War Labor

Board which granted one-week severance pay, New Indiana Chair Co., and United Furniture Workers of America, Local 331 (CIO), Case No. 111-269-6 [13 War Lab. Rep. 301], in the following words:

"The question of bonuses for employees entering the armed forces is a matter of collective bargaining. The Board will not order such payments."

In the same instance, the Board, however, ordered that accrued vacation pay be given at time of severance. In a prior case, that of Borg-Warner Corp., National War Labor Board case, No. 4246-D, dated Aug. 18, 1943 [10 War Lab. Rep. 631], the National Board [panel] declared:

"Although many industries and concerns grant severance pay to employees entering the armed forces, such a provision is not one which an employer should be directed to agree to. It is matter that lies within the discretion of management."

Since the company has been giving such severance pay to its employees on a voluntary basis and, further, since the dominant Board policy seems to refuse to order such pay, the panel recommends that no directive be issued requiring any increase in the present rate of severance pay.

The discharge of an employee differs from his entry into armed services in that his income ceases until other employment is obtained. The relative recency of production stoppages in defense plants seems to have obviated any dominant Board policy in this matter. The panel hesitates to determine the attitude of the Regional Board in this respect. It does, however, wish to suggest that in the Board's review of this issue the following be considered:

1. The company in question does give termination pay to its salaried employees in this plant;

2. The increased cost of such a plan would not work a hardship to the company but would revert to the government since the company operates under a cost-plus-fixed-fee contract.

3. Hours of Work and Overtime

(1) The first question in dispute is whether the sixth and seventh consecutive days of work must be within the regularly scheduled workweek, these sixth and seventh days to receive overtime pay; or whether any sixth and seventh consecutive day worked shall receive such overtime.

(2) The first and second issues are intimately related. The changing of shift schedules would obviate the first issue. It is questioned whether such shift schedules should be changed.

(3) A further point of departure between the company and union is whether holidays (even if not worked) and all days where the employer is unable to complete a regular eight-hour day for justifiable reasons shall be counted in the computation of the sixth and seventh consecutive day.

(4) The dispute here centers about the question of paying time and one-half for any work in excess of 8 hours in any 24-hour period.

(5) Should employees who have been recalled to work after having completed a day or night's work and after having left the premises be paid at the rate of time and one-half for such time? It is a further matter of disagreement as to whether in such instances employees shall be guaranteed not less than four hours' work or pay.

(6) In some instances the company lays off employees during the week, thus obviating the need of paying overtime. Is this practice an undesirable one?

Union's Position

(1) The union contends that Executive Order 9240 [8 War Lab. Rep. XXVII, 20 War Lab. Rep., No. 3, IX; WCDS 20] does not intend to distinguish between six or seven consecutive workdays within or outside of the regular workweek. The strain both mental and physical and the social disadvantages of such continued application to work is equally great in both instances and should be compensated in equal fashion.

(2) The company, it is charged, deliberately arranges its workweek in such fashion as to work the employees in six or seven consecutive day shifts which rarely fall within a given workweek. By starting the workweek at 8 a. m. on Wednesdays, rather than on some other day such as Monday, shifts are so staggered as rarely, if ever, to start on Wednesday; the result is frequent six or seven consecutive workdays within a given shift but not within a given workweek. The union feels this a deep injustice effected for the very obvious purpose of obtaining seven days' work without overtime and strenuously urges that the company be directed to revise its shift schedules so as to correct this situation.

(3) The union contends that holidays (even when not worked) and all

other days when employees cannot complete a regular eight-hour day for justifiable reasons [should] be counted in computing weekly overtime. This, it believes, is in accord with Executive Order 9240.

(4) The union requests that any future contract be worded to the effect that time and one-half be paid for any hours worked in excess of 8 hours in any 24-hour period, such period to start at the actual time the employee starts to work. In the union brief, reference is made to an identical recommendation made by the panel in the Koppers Company case.

(5) The union urges that the contract also grant employees, recalled to work after completing a day or night's work and who have left the premises, time and one-half for such time worked. It further insists that not less than four hours' work or pay be given in such instances, as is the accepted practice elsewhere.

(6) The union argues it is an unfair practice on the part of the company to lay off workers during the week solely to avoid overtime.

Company's Position

(1) The company alleges that any overtime pay for the sixth or seventh consecutive day of work not in a given workweek is a violation of Executive Order 9240 and that the company has no right to comply with the union's request in this matter.

(2) Relative to the need or possibility of changing the relative shift schedules so that seven consecutive days would not run across two workweeks, the company volunteered to send a list of such schedules. This list together with a letter was dated Mar. 4, 1944. In the letter the company states the following:

"You will note from the above that each shift had one day off during each week from Wednesday to Tuesday inclusive and that each seventh week at the time of their changing from one shift to another they had two days off consecutively."

(3) Because of the anticipated complete shutdown of the plant and the company's opinion that any reopening of the plant was highly improbable, the company did not discuss this issue other than stating opposition to it.

(4) In the contract proposed by the company, it agrees to pay time and one-half "for all time worked in excess of 8 hours in any one day" rather than in any "24-hour period."

(5) The company has voluntarily, but with no agreement, given three hours' work or pay to such employees as are recalled to work after having completed a day or night's work and after having left the premises. It sees no reason why this should be raised to four hours' work or pay.

(6) The reasons for laying off employees during the week, thus avoiding overtime pay, the company thinks "too obvious" to need any discussion.

Discussion and Recommendations:

(1) Executive Order 9240 clearly states:

"Where, because of emergency conditions, an employee is required to work for seven consecutive days in any regularly scheduled workweek a premium wage of doubletime compensation shall be paid for work on the seventh day."

It further states that no more than time and one-half shall be paid "for work performed on the sixth day worked in any regularly scheduled workweek." In a second interpretation of Executive Order 9240, the Secretary of Labor on Jan. 26, 1943, declared that the seventh consecutive day of work must occur in the regular workweek—a week of seven days starting on some calendar day each week before premium rate is paid.

In the original interpretation by the Secretary of Labor, dated Sep. 28, 1942, it was established that doubletime for the seventh day of work was intended to induce employers to afford a day of rest in each regular workweek. It was further therein stated that premium pay for the sixth day of consecutive work in any regularly scheduled workweek was intended to discourage absenteeism.

The panel does not feel competent to decide the application of a paradoxical interpretation such as this, nor does it presume to indicate the direction of the Board's determination in this matter.

(2) A study of the shift schedules submitted by the company indicates that of all the numerous shifts only one (H shift schedule) starts on Wednesday at 8 a. m., the beginning of the regular workweek. All others are so arranged that in most instances the employees work seven consecutive days so arranged as to fall within two workweeks.

This may be in accord with the letter of Executive Order 9240; it very ob-

viously defies the clear intent of that Order as indicated by the Order itself and by the interpretations of the Secretary of Labor. Under Sec. III of Executive Order 9240, the President stated:

"Nothing in this Order shall be construed as requiring a modification of the principle that every employee should have at least one day of rest in every seven days. The continuous operation of plants and machines in prosecuting the war does not require that employees should work seven consecutive days."

This thought was further confirmed by the Secretary of Labor, as previously quoted, by stating that absenteeism would be reduced if the worker were not impelled to work six or more consecutive days. The discouraging of absenteeism was the expressed purpose of the Executive Order. Quite obviously the company in this instance has so arranged its schedule of shifts as to avoid the implications of Executive Order 9240. The company's schedule shows as an instance that, when the A day shift changes to the B night shift, eight consecutive days are worked with no day of rest and no double pay. Wednesday is chosen for the apparently obvious purpose of avoiding the overtime of the Executive Order on double days off.

If the company is permitted to so stagger its shifts as to avoid the above Order, the purpose of that Order (which is that of discouraging overstrain and a consequent loss of productive efficiency) is avoided. The employer will not be discouraged from unduly long shifts because the employer thus avoids the penalty of paying overtime.

The panel recommends, accordingly, that the company be directed to initiate a new shift schedule in consultation and after agreement with the union so as not to avoid the apparently clear intent and purpose of the Presidential Order. In so doing it should conform, as far as possible, "to the hourly schedules of plants in the same identical area" to avoid labor pirating. (Recommendations of Hours of Work for Maximum Production, OWI.)

(3) By virtue of the same reasoning, it appears that holidays when not worked should not be computed for overtime pay. Such holidays afford the needed day of rest and discourage absenteeism.

In vew of the agreement between the company and the union on a 40-hour workweek or week's work (depending upon the Board's application of Executive Order 9240), it appears that, should employees work less than 8 hours on any given workday, such workday should not be counted as a full workday in computing overtime but that the hours actually worked be counted among the 40 hours and that overtime be paid for any hours in excess of 40 hours for the week as designated.

(4) The union request for time and a half overtime pay for hours worked in excess of eight hours in any 24-hour period and that such period start at the actual time the employee starts to work seems reasonable and in accord with previous panel opinion. However, it is the opinion of this panel that such overtime be not granted on those days when a change in shift is the occasion of such excess hours within a 24-hour period.

(5) The panel recommends that the company be directed to pay for four hours' work in event of recall of employee who has already completed a day or night's work and who has left the premises and, further, that such work be paid at the regular overtime rate of time and one-half. This opinion was established by the National Board in the case of the Cotton Garments Industry (War Labor Reports, Wage and Salary Stabilization, Vol. 13, p. 83; Dec. 22, 1943):

"Employees who report for work at their regular hour in the absence of notice from the employer to the contrary or at an hour designated by the employer shall be paid at their established hourly or piece rate earnings for all time between the hour they report for work and the hour they are dismissed for the day but in no event for less than four hours; provided, however, that this clause shall not apply in cases of power failure, fire, or other causes over which the employer has no control."

(6) The union request that the company refrain from laying off an employee to avoid paying overtime seems to militate clearly against the purpose and intent of Executive Order 9240 as previously discussed. That Order was issued for the purpose of discouraging the employer from working his employees more than five consecutive days according to the Secretary of Labor.

(1) Whether all employees within this certified unit shall receive a 15

per cent increase in wages. The plant started operation on Oct. 1, 1941; there has been no increase in wages since that date for this bargaining unit.

(2) Whether employees promoted or transferred to a higher rated job, even [when] such is temporary, shall immediately receive the higher rate of pay and when transferred to a lower rated job shall receive their regular rate of pay.

(3) Whether extra-nitrate operators shall receive an additional five cents per hour and swing men an additional ten cents per hour. Further, whether a new classification should be made by the Board for extra-nitrate operator.

Union's Position

(1) In view of the increased cost of living since Oct. 1, 1941, the start of operations in this plant, the union feels entitled to an increase in pay. The fact that other bargaining units in this plant have received such an increase tends to create inequalities within the plant.

Wage increases were approved by the War Labor Board for the maintenance electricians and maintenance electrician foremen, jumping the rates from 80 cents—$1.15 to $1.30—$1.40. Water plant employees were granted ten-cent per hour increase by the War Labor Board in July 1943. Power house employees also were granted wage increase by the War Labor Board. To refuse a similar wage increase to the complaining union now would be to perpetuate inequalities and the injustice of having to work at rates established at the start of operations while cost of living has soared since that time. The union contends the original rates did not reflect the then existing higher costs of living.

(2) When employees were shifted to a higher rated job or a lower rated job, the practice has been not to apply such higher or lower rates immediately. The union contends that any such upward transfer, even if temporary, should receive at once a higher rate of pay since the worker performs a higher skill or assumes a greater responsibility. It further contends that, on any shift back to a lower job, pay rate should not be reduced unless such a shift back is permanent. The union claims the company policy in this respect has not been a consistent one. It also complains of the practice whereby any shift, either backward or forward, even when permanent, does not carry the new rate of pay until the start of the next workweek. Since the workweek starts on Monday, a worker shifted to a higher permanent job on Tuesday would not receive higher rates of pay until and beginning with the ensuing Wednesday.

(3) The extra-nitrate operator should be granted a distinct classification since he must know and examine five sets of skills as compared with the one skill other nitrate operators employ. This employee must be acquainted with the skills in five separate houses known respectively as the mono-house, bi-house, tri-house, fortifier, and recovery house. The extra operator of these houses must know five sets of processes, formulae, etc. The union feels this job should receive a higher rate of pay of five cents per hour, in accord with the extra knowledge and skill demanded of such a worker. The increased risk assumed, especially in the tri-house, by virtue of a more dangerous type of work, is additional reason for such extra compensation. The fact that the company selects its foremen from the extra-nitrate operator group is confirmation by the company of the higher qualifications found in this group of extra operators.

For like reasons, the union contends that swingmen should receive an added ten cents per hour despite the company's willingness to grant a five-cent increase. Swingmen are expected to swing on each and every operating job, thus requiring knowledge and employment of a large variety of skills. (Issue 7, union brief, p. 10, under wages, disposed of under "Hours of Work and Overtime.")

Company's Position

(1) The company rejects the union's position for an overall wage increase for this unit on the grounds that such would create an inter-plant inequity in view of the fact that the present rates paid are well within the bracket of sound and tested rates in this area. It would also create an intra-plant inequity since rates paid these employees are fair compared with rates paid other employees at this plant.*

The company, however, admits that powerhouse employees were granted a raise in July 1942 through collective bargaining, and the water plant em-

* No attempt was made to prove the existence of inter- and intra-plant inequalities alleged by the company; no comparative data or any other evidence of such inequity was offered.

ployees were also given a ten-cent hourly raise on Nov. 2, 1942, by the War Labor Board. On the other hand, it denies that the electricians were given a raise due to objection of the War Department. The powerhouse engineers likewise were refused a raise by the Wage Administration.

It is further asserted by the company that granting the union's wage request would increase the cost to the Government of the past operation of the plant if made retroactive and would set a dangerous precedent for those ordnance plants still operating. It would tend to aggravate the general trend toward inflationary price levels.

(2) The company contends that shifts forward and backward which are merely temporary should not receive a higher or lower rate of pay. The loss sustained in the former instance, it claims, will be balanced off by the gains made in the second instance. The company denies any inconsistent policy in these respects.

Accounting convenience has given rise to the practice of not changing the rate of pay until the regular payday while no complete records are kept of all such shifts to a higher or lower job. Accordingly, the company alleges inadequacy of records should any retroactive action be directed here. This inadequacy is questioned by the union.

(3) The company admits an extra nitrate operator must know five sets of skills and operate in five distinct houses. They also admit foremen are picked from this group of operators. However, they deny any gradation in skills as between these houses or any differential in the dangerous nature of the work in the five houses. The company also agrees that swingmen must be acquainted with the various operations and evidences a readiness to pay them five cents but not ten cents an hour extra.

Discussion and Recommendations

(1) The bargaining unit in question has received no increase in wages since the start of operations on Oct. 1, 1941. It is admitted that other units within the same plant have been granted such wage increases by the War Labor Board and the company. The large increase in the cost of living since October 1941 has led to an upward adjustment of wages within the limits of the Little Steel formula in many cases before the Board. The panel thinks it only just and equitable that this unit be given a wage increase in accord with the brackets for each respective job as determined by the Wage Stabilization Division of the War Labor Board for this area.

(2) Those employees transferred to a higher rated job, even if temporary, should be granted an immediate higher rate of pay. Those transferred to a lower rated job should not, if temporary, be given a lower rate of pay. The inconvenience alleged by the company in recording such transfers at once does not warrant the company's not keeping such records. Inconvenience is scarcely a justifiable reason for perpetuating an inequity. The panel hesitates to take a stand on the retroactive aspect of this issue in view of the statement of the company as to the nonexistence of complete records relative to such transfers in the past, which is denied by the union.

(3) It appears beyond dispute and is admitted by the company that extra-nitrate operators must be adept at five sets of skills. Furthermore, the fact that foremen are selected from this group indicates the various skills required by these extra operators. In the opinion of the panel, any employee expected to have knowledge of and to employ such knowledge of a number of distinct skills is entitled to a higher rate of pay than the employee whose job demands only one skill. The panel recommends an additional five cents per hour for the extra-nitrate operators and the establishing of a separate and distinct classification for such employees.*

For similar reasons, especially because of the greater knowledge of varied skills required on each and every operation, the swingmen seem entitled to a higher rate of pay. No facts or arguments were produced to show that swingmen should receive more than the extra operator. Whether the higher rate be an addition of five cents or ten cents per hour the panel prefers the Board to decide. Separate classifications of swingmen are recommended.

When employee is transferred to a higher rated job by the employer, even if temporary, such is to the obvious advantage of the latter and requires the use of a higher skill. It should receive higher rates of pay. But when

* In view of conflicting statements of company and union, hazards and varying skills in extra-nitrator work would have to be determined by an arbitrator.

employee is transferred to a lower rated job when temporary, he should not be paid a lower rate; this temporary arrangement accrues to the advantage of the employer; further, such employee began working with the employer with at least implied understanding of certain hourly rates. He should not have to accept less if temporarily he obliges employer by doing a lower rated type of work.

5. Changing Clothes on Company Time

The dispute is simply whether or not the employees of the bargaining unit who are required to change clothes should be compensated one-half hour's pay at overtime rate. Some departments in which the employees were required to wear uniforms were so paid until production on the evening and night shifts ceased on Feb. 2, 1944. The present practice on the remaining day shift is to permit the changing of clothes during the eight-hour shift and at regular pay.

Union's Position

The union argues that the above practice is in effect but that it covers certain departments while other departments were not so covered.

Company's Position

The company contends it did pay all employees such overtime for changing clothes in those instances where the company required it but not when change of clothing was not required by company. It still pays the day shift for a required change of clothes at regular rate since clothes are changed in the regular eight-hour workday.

Discussion and Recommendations

If the company demands that clothes be changed, such requirement makes this act a part of the employees' work and should be paid; if it is not required by the company, the employee should not expect such pay. The panel recommends that, when such required change of clothes occurs during the regular eight-hour workday, it be paid at regular rates; if done before or after the regular shift or both, it be paid at time and one-half.

6. Wearing Apparel

The company and union cannot agree as to whether wearing apparel is to be furnished by the company at its expense for all employees in the plant or for just those employees whom the company requires to wear special clothes.

Union's Position

The union contends the company should furnish work clothes to all employees without cost to them since the work in this plant is destructive of wearing apparel. The union singles out the acidary workers especially, holding that such workers are subject to burns which might be obviated by proper protective clothing. Such clothing, the union contends, is given by other companies in this area in which chemicals are worked with or upon.

Company's Position

Clothing has been required of certain departments and given by the company at its own cost while work shoes furnished have been given to employees at half cost. Not all departments are equally dangerous hence not all have received clothing furnished by the company. It is admitted that acidary workers are subject to acid burns and do injure clothes at times.

Discussion and Recommendations

Prevalent practice in industry seems to indicate that clothing is not required or furnished by the company unless there are special hazards or risks associated with the work. The degree of risk and therefore the need for such special clothing obviously cannot be determined by the panel for each particular work job in this unit. Should the company be in operation at the effective date of the Board order, it is recommended that this issue be settled by arbitration.

7. Physical Examination

The questions under dispute relate to the following:

Whether (1) an examination be given by the company at time of employment; (2) such examination be made on company time; (3) examinations be given every 90 days; (4) reports and X-rays be available upon request, and (5) minor ailments be treated by the company.

Union's Position

The union considers it a company responsibility to give examinations with X-ray on company time both at time of employment and at regular intervals of 90 days. It feels that, were the reports of these examinations given to employees, such would accrue to the benefit of employer and employee alike. Colds and other minor

ailments due to the type of work should be treated by company's physician.

Company's Position

The practice of giving physical examination with X ray at time of employment and periodically thereafter has always been followed. No further company comment in view of the plant shutdown.

Discussion and Recommendations

Examinations made as a condition of employment are as much a benefit to the employee as the employer. Accordingly, such examination should not be made on company time. The exact time interval to elapse between examinations should be determined by the nature of the occupation of the employee since some types of work expose the workers' health far more than others. This matter can only be determined, it would seem, after investigation by an arbitrator.

Were reports of examinations given to employees, upon request, it would doubtless assist them in maintaining their health and taking precautions against ill-health; this in turn should accrue to the benefit of the company and of the war effort in decreased absenteeism and increased efficiency. However, general practice seems to indicate that the X rays themselves be retained by the employer. For the same reasons as well as because of the general responsibility of an employer to safeguard the health of his workers in dangerous occupations, all ailments, minor or otherwise, contracted, directly or indirectly, as a result of employment and by virtue of the type of work done ought to be treated by the company physician.

8. Travel-Time Allowance

The disputed issue revolves about the distance of the workers' homes from the plant, the time consumed in going to and from the plant, and the cost of such transportation and whether the company should assume these costs.

Union's Position

The union insists that $1.00 a day be paid employees for transportation expenses. The peculiar location of the plant remote from urban centers requires the employees to spend from two to four hours daily enroute. Employees live from 10 to 60 miles from the plant. The normal functions of ordinary living are interfered with by time taken in transportation.

The union rejects the company's claim that at the time of employment the employees knew of this transportation difficulty. The union feels it had no grievance procedure at that time and could do nothing about this situation. Furthermore the bus company has raised the fare since the start of the employment.

Company's Position

Any order to the company requiring travel pay would circumvent and go beyond the authority granted in Executive Order 9250 [11 War Lab. Rep. VII; WCDS 32] [and 9328 [7 War Lab. Rep. VII; WCDS 26]]. The employees at the time of employment knew of the time and distance involved. Such a grant of travel pay would create intra-plant inequity, and such has been denied by Regional Board VII to two groups of employees: The guards, NWLB, Case No. 7-D-297 (111-2204) Dec. 9, 1943 [21 War Lab. Rep. 196], and the power house employees, WLB, Case No. 7-D-614 (111-3611-D) Jan. 5, 1944. In both cases, the Board refused the grant on the basis of intra-plant inequities.

The company also contends that such a grant would create inter-plant inequities. Other ordnance plants similarly located do not, to the company's knowledge, give such pay. Granting travel allowance would set a precedent for the 60 or more other government owned plants and would add to cost of production which would accrue to the Government and the taxpayer. Any such allowance would be a hidden wage increase and opposed to the stabilization program.

Discussion and Recommendations

The general practice in the whole industry indicates that no travel-time allowance is given. The Board in Region VII has, as indicated by the company, twice denied such grants to employees in this plant on the basis of intra-plant inequity. Board policy in this respect has apparently been fixed. However, the panel requests that the Board take into consideration the cost and time entailed in transportation when considering the issue of wage increases for this bargaining unit.

9. Dormitory Fee

The company maintains a dormitory for employees who are required to remain on the plant grounds to effect a rapid changeover. A fee of

50 cents is charged employees occupying sleeping cots. The dispute arises over the question of who should bear this cost, the company or the union.

Union's Position

When an employee is required to remain on the premises or at night for a quick changeover, such accrues to the benefit of the company, and the cost of same should not be allocated to the employee.

Company's Position

The company asserts that the United States Ordnance Department demanded of them that they levy a charge of 50 cents, and they could not, if they would, do otherwise. It also contends that such a facility at the plant saves the employee the time and expense of transportation as well as the services of lodging.

Discussion and Recommendations

Since it clearly is to the advantage of the company and is required by them that such employees remain on the premises, it would appear the part of equity that no charge be made for a cot in the dormitory. However, the panel hesitates to recommend that the Regional Board issue a directive in opposition to an order by the Ordnance Department.

10. Like Pay for Like Work

The period of dispute centers about the problem—Should all employees, beginners and experienced workers alike, receive equal pay on identical jobs?

Union's Position

The union thinks that unlike pay on identical jobs leads to discontent and inefficiency. A beginner accordingly should receive the same pay as a more experienced worker. Differential pay for the same work determined by the decision of the employer is disliked by the union. The employer might advance certain employees through personal bias or preference rather than on the basis of merit. Should any retroactive action be ordered, the union contends that job cards did show specific work for each day.

Company's Position

Wage differences are due to greater ability and experience since employees are advanced in line of merit. The company contends that its starting rates are higher than the prevailing rates for comparable work in other industries in this area. Should retroaction be specified here, the company alleges no record is available of specific work of the day as job tickets would not evidence this.

Discussion and Recommendations

To grant the same rate of pay to all workers on identical jobs would be to stunt incentive, retard the growth of experience, lessen efficiency, and create an evident inequity between beginners and those more experienced. While advances in rates freely left to the discretion of the employer can lead to similar results through personal likes or biases, a fixed schedule for upgrading applicable to employees and based on a time-served basis would not warrant complete equity. Some workers attain much more skill within a given time than others due to native ability or special talent. The panel, therefore, recommends that this matter be given to arbitration if the plant is in operation at the time of the effective date of the Board order.

11. Sick Leave

The clause proposed by the union and disputed by the employer reads as follows:

"All employees with six or more months of service with the company shall be entitled to five weeks' sick leave annually with full pay based on their number of hours worked per week at the time of sick leave."

Employees working under conditions injurious in greater or less degree to health should be given sick leave with pay. Illness is sometime due to such working conditions. Even if illness is due to natural causes, the company concern for its employees should grant such a leave. This would make for good will. The union further sees no justification in hourly workers being denied sick leave with pay while salaried workers receive such. Since hourly workers, the union alleges, are required by the company to furnish a release from their doctor and be given a checkover by the company physician before returning to work, sick leave should be given. Such releases and medical reports afford a record for any retroactive action.

The union contends that such sick leave grants are given at Laclede Gas and Light Co. and Monsanto Chemical Co.

Company's Position

Though salaried workers are paid for sick leave, there is no set policy

in this respect. In all instances the policy is determined by the general manager. The same sick leave with pay is not given to hourly workers. When returning to work, salaried employees must present a doctor's certificate, and, in some cases, but not all, the company demanded a doctor's release for hourly workers.

Discussion and Recommendations

In the case of U. S. Vanadium Corp. and the United Mine Workers of America, District 50, Local 12615, Case No. 111-1020-D, Dec. 4, 1943, sick leave was denied on the grounds that no unusual health hazards were present in the plant and, because, according to the National Board, it is not proper to require a sick leave plan to be put in effect unless there are special circumstances or extraordinary conditions inherent in the employment to justify imposing a sick leave plan on an objecting employer.

In the present case it would seem that there are some such health hazards warranting sick leave with pay. The periodic examination of employees by the company would indicate the presence of such hazards as would the furnishing of special protective clothes to the workers in some jobs.

Before any definite plan could be rightly imposed, the panel would have to possess the facts relative to the exact nature of the hazards in each job in the bargaining unit under question. Sick leave, in extent and duration, could then be determined for each job classification in accord with hazard involved. The panel therefore recommends that this, along with the previously determined issue, be submitted to an arbitration process.

The instance of the Laclede Gas Light Company, cited by the union, does not uphold the union's contention for five weeks' sick leave with pay. The labor agreement of said company [provides that] employees with less than a year of service be given no sick leave allowance; those over a year but less than two receive one-week allowance; in no instance are any employees given more than three weeks.

12. Safety and Security

Discussion and Recommendations

Due to the request of both the company and the union, this issue was dropped from the hearings. The panel recommends this issue be left to collective bargaining.

13. Night-Shift Premium

The company and union fail to agree as to the inclusion of a clause in any future contract, granting a 5-cent per hour bonus for the 4 to 12 shift and a 10-cent per hour bonus for the 12 to 8 shift.

Union's Position

Because any shift other than the regular day shift requires many adjustments to be made in the normal mode of living, occasions serious inconvenience to the worker and his family, and makes a heavier demand upon health than daywork, such evening and night shifts ought to be proportionately remunerated. This is true whether the shifts be rotating or not; in either case, normal living is disrupted and inconveniences ensue.

The union asked the panel to consider the instances of United States Cartridge Company, Monsanto Chemical plant, National Lead plants, Socony Vacuum Corp., McQuay Norris, and American Agricultural Co., all of which recognize the inconvenience entailed in late shifts even when rotating and pay a bonus for such shifts. The Board recently approved an increase in the shift bonus at the Monsanto plant, the union states.

Company's Position

The company states that in the above named cases extra pay for night shifts had been in existence and merely were given an increase in already established bonus pay plans.

At the time of the opening of the plant, the necessity of practically all employees working rotating shifts was considered in setting wage rates. At present there remains only the regular eight-hour shift, which will soon be eliminated.

Granting such bonus to the evening and night shifts would, in the opinion of the company, be in effect a retroactive wage increase and an avoidance of Executive Orders 9250 and 9328.

The company argues further that such bonuses are not justified under present wage rates, under its equitable rotating shift schedules, under the Little Steel formula, under prevailing practice in this area, and under the Regional and National War Labor Board cases enclosed herewith.

Discussion and Recommendations

The statement of the company that the inconvenience of night shifts was taken into consideration in the original wage structure was not given the support of evidence. No comparative

wage rate schedules were presented to the panel. The panel is not convinced of the equity of such a flat rate of pay for all shifts. Should an individual employee start work on a night shift and follow by work on a day shift, the pay would be equalized; but, in the event the employee works on a night shift just prior to discharge or resignation, he would forfeit the extra pay for the night shift ordinarily equalized by the ensuing day shift rate of pay. It appears more equitable that a bonus system for the evening and night shifts be initiated so as to avoid any injustices in this respect.

Both National and regional board decisions can be found denying or granting such bonuses. In view of this unsettled policy of the various boards and in view of the panel's inability, in absence of proof, to determine whether the original wage structure did take cognizance of the inconveniences attached to late shifts, the panel requests the Regional Board to dispose of this issue as it deems appropriate.

[Ed. Note: Discussion on Issue 14, at this point in the panel report, is reproduced at 21 War Lab. Rep. 66.]

SUMMARY OF RECOMMENDATIONS

The panel recommends the following:

1. (1) That the union be denied its request for a closed shop,

(2) That the union be awarded maintenance of membership with a 15-day escape period and also a compulsory irrevocable check-off; provided that the Weldon Springs Ordnance plant resumes operations within 30 days of the Board's order and, further, subject to the considerations discussed under Issue 14 of this brief.

2. (1) That the company be not compelled to pay severance pay or increase such severance pay for employees going into military service.

(2) That the Regional Board decide the issue of termination pay, taking into consideration facts suggested in detailed recommendations by the panel.

3. (1) That the Regional Board interpret the application of Executive Order 9240 relative to overtime pay for the sixth and seventh days worked consecutively but not in a given workweek.

(2) That the company be directed to initiate a revised shift schedule so as to obviate, as far as possible, any six or seven days of consecutive work not in a given workweek, in accord with the expressed intent of Executive Order 9240.

(3) Holidays not worked should not be computed for overtime.

(4) Employees working less than eight hours on any given workday be not allowed to count such a full workday for overtime computation but that the hours actually worked be counted among the 40 hours and that overtime be paid for any hours in excess of 40 hours for the week as designated.

(5) The union request for time and one-half overtime for hours worked in excess of eight hours in any 24-hour period and that such period start at actual time employee starts to work be granted; provided that such excess hours do not accrue as result of change of shift for the week.

(6) The company be directed to guarantee four hours of work or pay and pay time and one-half in event of recall of employee who has already completed a day or night's work and who has left the premises.

(7) The union request that the company refrain from laying off an employee to avoid overtime be denied.

4. (1) The unit represented by the union be given a wage increase in accord with the brackets for each job classification as determined by the Wage Stabilization Division of the War Labor Board for this area.

(2) Those employees transferred to a higher rated job, even if temporary, should immediately be given a higher rate of pay; when shifted to a lower rated job, they should not, unless permanent, be given a lower rate of pay. The panel hesitates to take a stand on the retroactive aspect of this issue in view of the conflicting statements of company and union as to the existence of complete records of such transfers.

(3) Extra-nitrate operators be given five cents an hour extra. Swingmen should receive at least five cents an hour extra (which the company first refused but is now willing to grant). If, in the Board opinion, the duties of swingmen exceed those of an extra-nitrate operator, the panel recommends 10 cents an hour extra.

New classification for the two above groups of employees is recommended.

5. If the company required a change of clothes, employees should be paid for time so used; if not required, no pay should be given. If required, the pay should be time and one-half only when done before or after regular eight hours of work.

6. Should the company be in operation the effective date of the Board order, the issue of whether clothing should be furnished by the company at company's expense, including shoes, for all employees, be determined by arbitration.

7. (1) Examinations made as a condition of employment not be made on company time.

(2) The frequency of ensuing examinations be determined after investigation of health hazards for various types of work, by arbitration.

(3) Reports of such examinations be given to employees upon request but X-rays themselves not to be given to employees.

(4) Ailments, minor or otherwise, contracted by virtue of type of work or working conditions be treated by the company physician.

8. Employees be compensated for travel-time allowance but this expense be reflected in grant of wage increase.

9. The panel believes the matter of dormitory fees be left to the Board, for reasons stated earlier.

10. If plant is in operation at effective date of Board order, the problem of the same pay for identical work be settled by an arbitrator.

11. The question of sick leave with pay be at the same time arbitrated due to varying hazards of different jobs.

12. The safety and security clauses be left to collective bargaining by request of both parties concerned.

13. Panel recommends initiating a bonus system for evening and night shifts rather than a flat rate of pay for all shifts; it further requests the Board to decide the issue of granting such bonuses, for reasons stated.

14. Panel recommends proposed contract have as its effective date Nov. 11, 1943; that retroactive wage increase be given to this date; that the retroaction and effective date of the following issues listed under summary of recommendations be decided by the Board: 2(2), 3(1), 3(5), 3(6), 4(2), 9, 13.

Panel recommends a directive be issued that the company and union sign a contract for present employees as well as for those effected by any retroactive grants. It further recommends the inclusion of a contingent clause in event plant is reopened.

Signed by A. H. Clemens, representing the public; T. M. Karches, representing employers, subject to dissent with opinion on Issues 1, 3, 4, 8, 9, 11, and 14; and R. B. Logsdon representing labor, subject to dissent with opinion on Issues 1, 2, 3, 4, 8, 11, and 13.

Dissenting Opinion of Labor Representative

Please refer to the summary of recommendations and the numbers thereon to check with the dissents listed here.

1. UNION SECURITY

The labor panel member dissents from this provision which awards maintenance of membership and compulsory check-off only to the extent that the panel's order restricts this provision in such a manner that it becomes effective only if the company resumes operation within 30 days of the date of the Board order. I recommend that any limitation on the period of time for this provision to become effective shall be eliminated. Whether or not the company should resume operation in 29 days or 31 days following the date of the order has no bearing on this case. Any other interpretation represents legalistic or tight thinking.

2. SEVERANCE PAY

The dissent for the section on severance pay and termination pay is limited to the question of two weeks' notice of layoff. I recommend that, in any case where the company did not give two weeks' notice of termination from the job, the company be ordered to pay two weeks' pay to the employee in lieu of two weeks' notice. There is no less reason that the Government should take care of displaced war workers than they must apply the principles of the Baruch Report to take care of the transition period for war plants and the owners of those plants.

3. HOURS OF WORK

The only part of the question in relation to the Executive Order 9240 on which the labor member dissents is that it is recommended that overtime pay be ordered for the sixth and seventh consecutive day regardless of whether or not these fall within the same workweek. The labor member is well aware of Miss Perkins' latest of her series of interpretations. I am disposed to believe that my interpretation meets the facts in a far better manner than the shallow thinking set forth in her latest order on the subject.

Just as the cat may look at the queen, so a panel member may look at Miss Perkins and correct one of the wrongs she has perpetrated. In addition to this, I find no justification for not computing holidays as time worked for overtime. The general practice is to compute holidays for overtime purposes and is in conformity with Executive Order 9240.

4. WAGES

The labor panel member agrees with the recommendation on wages listed under Item 4 of the panel recommendations except that I specifically recommend that, on every job classification, an increase shall be granted which shall correspond to the number of months from Oct. 1, 1941, the starting day of plant operations, to May 1, 1942, the date of the Little Steel formula, divided by the entire number of months covered by the Little Steel formula up to May 1, 1942, multiplied by 15 per cent, such increase to be retroactive to the date recommended in the panel report.

8. TRAVEL TIME

The labor panel member agrees with the recommendation for travel time allowance but does not agree that this expense should be reflected in an additional wage increase grant. This would tend to evade the purposes of the Wage Stabilization Act and upset wage structures in this area. I recommend, therefore, that travel time allowance of one dollar per day be granted the employees of this plant retroactive to the date set forth in the panel recommendations, that is November 11, 1943.

11. SICK LEAVE

I recommend that the sick leave with pay be granted exactly on the basis requested by the union; the nature of the work and the hazards to health involved should explain this recommendation without further comment.

13. NIGHT-SHIFT PAY

The labor member of the panel recommends a five-cent bonus for nightwork on the second shift and a ten-cent bonus on the third shift, retroactive to Nov. 11, 1943.

Signed by R. B. Logsdon, representing labor.

Dissenting Opinion of Employer Representative

Apr. 24, 1944

UNION SECURITY

The Board must consider the bargaining unit. If only fifteen (15) employees remain in the collective bargaining unit out of the more than 1,500 workers who originally voted for the United, Gas, Coke and Chemical Workers of America (CIO), Local 222, as collective bargaining representative, it is highly questionable whether any type of union-security policy should be ordered by the Board. There is no need for the compulsory check-off.

Production has been cancelled. No workers will remain in the bargaining unit. There was evidence given in the hearing to conclude that, even though the Government should resume operation (this is very remote as the facilities are being dismantled), the company (Atlas Powder Company) would not be the contractor.

HOURS OF WORK

Sec. V of Executive Order 9240 provides:

"All federal departments and agencies affected by this order shall refer to the Secretary of Labor for determination questions of interpretation and application arising hereunder."

Executive Order 9248, dated Sept. 17, 1942, provides:

"By virtue of the authority vested in me by the Constitution and the Statutes, it is ordered that Sec. V of Executive Order 9240 of Sept. 9, 1942, entitled 'Regulations Relating to Overtime Wage Compensation,' be, and it is hereby, amended to read as follows:

'All federal departments and agencies affected by this Order shall refer to the Secretary of Labor for determination questions of interpretation and application arising hereunder. In any industry or occupation in which the Secretary finds that a wage stabilization agreement approved by a government department or agency is operating satisfactorily or in any industry or occupation in which the Secretary finds that the nature and exigencies of operations make such action necessary or advisable for the successful prosecution of the war, the Secretary may determine that any or all of the provisions of this Order

shall not apply to such industry or occupation or to any classes of employees therein.' "

Inasmuch as the Secretary of Labor has not determined that any of the provisions of Executive Order 9240 shall not apply to either the industry or any occupation or any classes of employees therein, it is my contention that the union demands are of a nature which can be determined only by the Secretary of Labor if there has been any action by the company which contravenes Executive Order 9240.

Relative to shift operations, the panel report and recommendation reflect failure to consider the accepted practices and policy. Under the discussion and recommendations on this issue, this statement is made:

"A study of the shift schedules submitted by the company indicates that, of all the numerous shifts, only one (H shift schedule) starts on Wednesday at 8:00 a.m., the beginning of the regular workweek."

Also, the following statement is made:

"The company's schedule shows, as an instance, that, when the 'A' day shift changes to the 'B' night shift, eight consecutive days are worked with no day of rest and no double pay. Wednesday is chosen for the apparently obvious reason of avoiding the overtime of the Executive Order on double days off."

It is pointed out that, whether the workweek started on Wednesday or any other day of the week, if a rotating schedule is arranged to give employees definite days off each week, at sometime during the cycle all shifts will require the same days of rest. This may be diagramed from the chart of shift operations submitted by the company as an exhibit. If the union feels, as it does, that the Executive Order 9240 is violated, it should be directed to make its appeal to the United States Secretary of Labor. This action is recommended as a more practical and proper procedure. I do not agree that the company be directed to initiate a new shift schedule. Again, I emphasize that the Board should more properly guide rather than order industrial relations.

The panel report and recommendations attempt to interpret Executive Order 9240 relating to holidays. The Order on this point provides:

"By virtue of the same reasoning, it appears that holidays when not worked should not be computed for overtime pay. Such holidays afford the needed day of rest and discourage absenteeism."

The panel report and recommendation would direct contravention of Interpretative Bulletin 1 of Executive Order 9240 issued Feb. 17, 1943, by the Secretary of Labor which states under Sec. VIII, Holidays, Par. 18, as follows:

"For purposes of computing the seventh day of work in a workweek under the Order, the designated holidays must be included in the count whether or not work is performed on such days. An idle holiday should be included in computing the sixth day worked in the workweek unless the employment contract specifies otherwise."

The company's policy conforms.

Relative to request for overtime pay beyond eight hours in any one workday, it has been indicated in the hearing that the company's policy complies with the Fair Labor Standards Act and the Walsh-Healey Public Contracts Act. I do not agree with the panel report and recommendation. The Board here again should guide the union to the proper authorities to determine that compliance is being obtained with the Fair Labor Standards Act and the Walsh-Healey Public Contracts Act.

There is no ruling necessary on the issue of pay for the hours of work performed when the employee is recalled after he has left the company's premises. Under FLSA, the workday is defined as the 24-hour period following the time of the regular start of the work shift. Therefore, any hours worked consecutively or intermittently during a 24-hour period are to be paid at regular rate for the first 8 and time and one-half regular rate for all hours over 8. If an employee in this case "has already completed a day or night's work (eight hours)," any hours performed upon recall would be paid at the rate of time and one-half.

WAGES

Nothing in the testimony supports the panel report and recommendation in restating the union's position that wage increases were approved by the War Labor Board for the maintenance electricians and the maintenance electrician foremen. (Board is reminded that these employees are not included in the unit represented by the UGC & CWA, Local 222 (CIO).) The company showed at the hearing

that a submission covering these employees was made by it to the War Department Wage Administration Agency. It requested a ten cent (10¢) an hour increase. The request was denied.

I call attention to the statement of views of War Department Wage Administration Agency re: Atlas Powder Company, Weldon Spring Ordnance plant, and United Gas, Coke and Chemical Workers of America, Local 222 (CIO), a copy of which was furnished to the panel. Had the company agreed with the union that the wage increases which they request were reasonable, it would of necessity have had to make application to the Wage Administration Agency for approval of such increases, and the above mentioned statement of views clearly indicates this agency's policy. The statement reads:

"The agency is unalterably opposed to the union's request for a 15 per cent general wage increase. The rates in effect at the facility at the time of its deactivation were well within the brackets of sound and tested rates."

Exception is taken to the panel report and recommendation in ordering: "Those employees transferred to a higher rated job, even if temporary, should be granted an immediate higher rate of pay." The reason for dissent on this issue is the impracticability of the procedure recommended. There are no individual job tickets. An employee is given a time card at the beginning of a workweek. If the employee is classified, for example, as a nitrate operator, his time card carries the hourly rate for this classification. When returned at the end of the workweek with daily hours recorded, the time is compiled and computed at the hourly rate shown on the time card. If the employee is assigned higher or lower rated jobs during the workweek, he still receives the rate of the job he regularly is assigned.

For practical operations, in view of absence of individual job tickets, the following policy might be recommended:

"If an employee works more than two-thirds of a month on any one job assignment, he shall be classified in the proper job class and receive the rate of the job class in which the job assignment is evaluated."

This policy would result in fairness to the employee and the company. In the absence of job analysis and job evaluation, it is not possible to find agreement with the panel report and recommendation that there is extra skill, responsibility, experience, job conditions, job hazards, etc., existing in the job of extra-nitrate operator to warrant relative increase in the job rate. Again, the grievance and arbitration procedure is recommended.

TRAVEL TIME

I do not concur in the recommendation set forth in the panel report and recommendation which states "the panel requests that the Board take into consideration the cost and time entailed in transportation when considering the issue of wage increases." Reason for dissenting opinion is that (1) employees have accepted their jobs with full knowledge of the plant location, (2) the employee is free to select the location of his residence (adjacent to or away from the plant) and place of employment, (3) travel time or transportation is not and should not be made an element of job evaluation.

DORMITORY FEE

I dissent from the recommendations of the panel on this issue: It has not been shown that it is to the advantage of the company that employees remain on the premises. The evidence introduced at the panel hearing clearly demonstrated that it was not required of any employee that he remain on the premises, and, if he did so, it was at his own convenience. The employees' actions were voluntary.

SICK LEAVE

Here again, in my opinion, is a matter which should not be considered by the War Labor Board but is an industrial relations policy to be gained through collective bargaining. The granting of pay for hours not worked is a gratuity to be sought through collective bargaining procedure and not the War Labor Board.

Signed by F. M. Karches, representing employers.

Cumulative

Index-Digest

Covering Volume 26 to Date

Rulings by the National War Labor Board, its regional boards and commissions, and the courts made in the decisions appearing in this volume, represented by headnote paragraphs, appear in the following pages arranged and classified by subject matter

Headings of the principal divisions are arranged alphabetically as are also the headings of the subdivisions, with a few exceptions to bring related subjects together. The purpose of the classification is to afford rapid reference to rulings regarding any particular subject matter.

Numerical designations are given to each main heading and all subheadings to facilitate ready reference to the place in the Index-Digest at which material under such headings and subheadings appears. The same and additional headings with their numerical designations appear in other volumes of WAR LABOR REPORTS, *thus assuring ease in locating rulings on a particular topic in all volumes.*

Main topics appear in capital letters and are designated by numbers followed by a decimal point but without digits beyond the decimal points. All subtopics and their subdivisions are designated by numbers having three digits after the decimal point. Subtopics immediately follow their designating numbers. Subdivisions thereof at the first level are separated from their numbers by one dash; those at the second level, that is, subdivisions of a subdivision, are separated from their numbers by two dashes. In some instances finer or less fine topical breakdown is used in one volume as compared to others.

For assistance in using the Index-Digest of the volumes as a unit, the reader is referred to the "Key" to Volumes 1-20, issued as a special supplement to 25 War Lab. Rep., No. 1 (June 27, 1945). Under each subject heading appear names of relevant cases with volume and page references to headnotes and text.

Rulings made by regional boards, commissions, and courts are so indicated in the Index-Digest. All other rulings are those of the National Board.

The main topics of the classification scheme appear below. Those topic headings which appear with a prefixed star (★) will be found in the Cumulative Index-Digest in this issue; those without the prefixed star appear in other volumes and may appear in later cumulations in this volume.

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Index-Digest

10. ARBITRATION

10.100 Subject Matter of Arbitration

10.101 —In general

Contract should provide that provision requiring annual wage guarantee is not subject to arbitration, as ordered by Regional Board. (1) Union claims that "to grant company right to arbitrate permanent layoffs if business conditions dictate such course would threaten security of workers" and (2) provision for no arbitration of guaranteed wage clause is in effect in 95 per cent of union's contracts with other employers in industry in area. Company's appeal for review is denied.—Melville Shoe Corp., 26 War Lab. Rep. 30.

Employer's request that apprentice ratio be liberalized is denied since there is no likelihood of companies being able to hire more apprentices at present and union has, in past, showed willingness to relax ratio to meet particular needs. Contract should, however, provide for arbitration of any disputes arising from union's refusal to permit exceptions.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

Grievance over allegedly discriminatory discharge of two employees should be submitted anew to single arbitrator for decision where original decision by tripartite board of arbitration was ambiguous and interpretation by two of original members, one of whom had dissented to award, led to new dispute. Decision should not be construed as relaxation of hands-off policy in non-wage arbitration proceedings but as providing solution fair to both parties and free from technicalities under peculiar facts of case.—Washington Garage Co., Inc., 26 War Lab. Rep. 431.

10.103 —Arbitrability of issue

Parties should submit to board of arbitration under contract question of whether change in "employee evaluation plan" made by company and resulting in reduction in rates within established rate range is arbitrable. If question is found to be arbitrable under contract, arbitrators should determine it finally. Industry members dissent, contending that Board, by directing arbitration, is avoiding ruling on novel question, namely, whether employers have right under merit rating plans to give "demerits" within rate ranges as well as merit increases.—Boeing Airplane Co., 26 War Lab. Rep. 50.

10.124 —Discharge

Parties whose grievance procedure does not provide for arbitration should submit to arbitration grievances presented by union over (1) alleged discharge of employee without just cause and (2) refusal to reinstate employee returning to work after sick leave. Issue to be arbitrated in second dispute is whether company's refusal to reinstate employee was based on report of plant physician or on some other reason which is not ground for refusal to grant reinstatement under contract.—Goodyear Aircraft Corp., 26 War Lab. Rep. 143.

10.127 —Grievance under union contract

Parties whose grievance procedure does not provide for arbitration should submit to arbitration grievances presented by union over (1) alleged discharge of employee without just cause and (2) refusal to reinstate employee returning to work after sick leave. Issue to be arbitrated in second dispute is whether company's refusal to reinstate employee was based on report of plant physician or on some other reason which is not ground for refusal to grant reinstatement under contract.—Goodyear Aircraft Corp., 26 War Lab. Rep. 143.

10.137 —Interpretation of contract

Immediate submission to umpire under contract is required as to any question concerning disciplinary action taken by company against (1) employees who were suspended for violating shop rule and (2) employees who walked out in sympathy with suspended employees. Union may present to umpire question as to whether and to what extent union has right under existing contract to negotiate subject of shop rules.—General Motors Corp., 26 War Lab. Rep. 53.

10.150 —Merit increases

Parties should submit to board of arbitration under contract question of whether change in "employee evaluation plan" made by company and resulting in reduction in rates within established rate range is arbitrable. If question is found to be arbitrable under contract, arbitrators should determine it finally. Industry members dissent, contending that Board, by directing arbitration, is avoiding ruling on novel question, namely, whether em-

★ *Indicates decisions in this issue*

ployers have right under merit rating plans to give "demerits" within rate ranges as well as merit increases.—Boeing Airplane Co., 26 War Lab. Rep. 50.

10.173 —Suspension

Parties in process of negotiating first contract who have agreed verbally on grievance procedure not terminating in arbitration should submit to arbitration dispute over company's suspension of 20 employees for refusal to perform work assigned by their supervisors. Arbitrator should decide whether company's action was unreasonable or arbitrary under circumstances of case.—Glenn L. Martin Co., 26 War Lab. Rep. 144.

10.196 —Work rules

Immediate submission to umpire under contract is required as to any question concerning disciplinary action taken by company against (1) employees who were suspended for violating shop rule and (2) employees who walked out in sympathy with suspended employees. Umpire may consider application of rule under all circumstances of case which include fact that rule was not in effect in plant from which suspended employees had been recently transferred. Union may present to umpire question as to whether and to what extent union has right under existing contract to negotiate subject of shop rules.—General Motors Corp., 26 War Lab. Rep. 53.

10.400 Arbitration Procedure

10.415 —Choice of arbitrator

10.418 — —Arbitrator appointed by Board

★ Arbitrator provided for in grievance procedure of contract should be named by War Labor Board, despite contention of union that appointment should be made by U. S. Conciliation Service because Conciliation Service is permanent agency and Board should not assume duties which may run beyond its existence.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 492.

10.468 —Review of award

Grievance over allegedly discriminatory discharge of two employees should be submitted anew to single arbitrator for decision where original decision by tripartite board of arbitration was ambiguous and interpretation by two of original members, one of whom had dissented to award, led to new dispute. Decision should not be construed as relaxation of hands-off policy in non-wage arbitration proceedings but as providing solution fair to both parties and free from technicalities under peculiar facts of case.—Washington Garage Co., Inc., 26 War Lab. Rep. 431.

15. BONUS PAYMENTS

15.050 Attendance Bonus

Region III (Philadelphia)

Company's request that Board order discontinuance of attendance bonus provision of prior contract is granted since, among other things, (1) attendance bonuses are not usually approved by WLB and (2) scheduled seven-day workweek in effect when bonus was originally approved has been reduced to six-day workweek. (Region III—Philadelphia)—Armstrong Cork Co. 26 War Lab. Rep. 90.

15.100 Amount of Bonus

Employees of investment banking firm subject to WLB jurisdiction are entitled to six per cent year-end bonus but not to 15 per cent bonus proposed by company, despite fact that Salary Stabilization Unit approved 15 per cent bonus for those of company's employees subject to its jurisdiction. Fact that Treasury approves certain bonus payments is not by itself sufficient ground for approval of similar bonus by Board and, except in unusual circumstances not deemed present in instant case, bonus paid by investment firms should be limited to six per cent of annual payroll.—Lehman Bros., 26 War Lab. Rep. 374.

15.100 Amount of Bonus

Region III (Philadelphia)

Company's request that Board order discontinuance of attendance bonus provision of prior contract is granted since, among other things, (1) attendance bonuses are not usually approved by WLB and (2) scheduled seven-day workweek in effect when bonus was originally approved has been reduced to six-day workweek. (Region III—Philadelphia)—Armstrong Cork Co. 26 War Lab. Rep. 90.

15.800 Wage Increase to Offset Discontinued Bonus

Union's request for increase to compensate for alleged inequalities caused by discontinuance of incentive bonus is denied since job rate adjustments previously directed by Board adequately compensate for discontinuance of bonus.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

★ To correct maladjustments and inequities which would interfere with effective transition to peacetime economy, merchant seamen are entitled to general wage increase of 45 dollars per month to be effective from date of elimination of wartime "voyage bonus" which averages 53 dollars per month. Although "main assumption" of Board in determining date

and amount of increase is elimination of wartime bonus, Board's decision is based on all equities of case, including those arising out of substandard wages, overtime, and other contentions of unions.—Maritime Cases, 26 War Lab. Rep. 509.

20. CHECK-OFF

20.100 Compulsory Dues Deduction

20.110 —Combined with membership maintenance

Union representing employees of interstate bus company is entitled to standard maintenance-of-membership and compulsory check-off provisions.—Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

20.300 Voluntary Dues Deduction

20.325 —Check-off with escape clause

Region IV (Atlanta)

Board denies company's request that automatic check-off, if ordered, include 15-day escape period, despite fact that negotiated maintenance-of-membership provision contains no escape clause. Hearing officer found that (1) number of cases in which National Board has required escape clause in check-off provision is small relative to number in which no escape clause has been granted and that (2) escape period would advantage union members only by giving them option of paying union dues in person since dues payment is necessitated by membership-maintenance. (Region IV—Atlanta)—Sefton Fibre Can Co., 26 War Lab. Rep. 475.

Region VII (Kansas City)

Union whose existing contract provides for maintenance of membership without escape clause and for voluntary check-off is awarded non-revocable check-off provision to apply to all employees who do not, within 15 days of date of Board's order, notify company that they do not wish to submit to check-off arrangement. Escape period is provided on theory that employees must nave free opportunity to escape from union-security clauses included in contracts by Board order. (Region VII—Kansas City)—Airtherm Mfg. Co., 26 War Lab. Rep. 220.

20.700 Reason for Granting Check-Off

20.715 —Dues collection difficulties

20.722 ——Physical barriers to collection

Region III (Philadelphia)

Union of restaurant employees, whose contract provides for modified form of union shop, is granted automatic check-off clause where delinquency in dues payments has been problem of increasing seriousness to union because of high turnover of personnel and scattered location of stores involved. (Region III—Philadelphia)—Labor Standards Assn., 26 War Lab. Rep. 231.

20.779 —Responsible union

Responsible union is entitled to voluntary check-off with proviso that neither party should coerce any employee into signing dues deduction certificate. Regional Board's order denying check-off because of small size of bargaining unit and because company permitted dues collection on company property is accordingly reversed.—General Motors Corp., 26 War Lab. Rep. 145.

★ Responsible union is entitled to standard maintenance-of-membership provision with compulsory check-off.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 492.

20.790 —Union shop, enforcement

Region III (Philadelphia)

Union of restaurant employees, whose contract provides for modified form of union shop, is granted automatic check-off clause where (1) delinquency in dues payments has been problem of increasing seriousness to union because of high turnover of personnel and scattered location of stores involved and (2) union has refrained from requiring discharge of members not in good standing. (Region III—Philadelphia)—Labor Standards Assn., 26 War Lab. Rep. 231.

20.810 Reason for Denying Check-Off

20.811 —Absence of reason for granting check-off

Region VIII (Dallas)

★ Union of shed workers representing employees in plant manufacturing cotton ginning machinery is not entitled to compulsory check-off clause but only to maintenance-of-membership provision, despite its contention that it is entitled to both clauses as matter of "right" under precedent of Little and Basic Steel cases. National Board has never established any such blanket policy, and, therefore, Regional Board will continue to award check-off only for some definite and specific reason existing in particular case. (Region VIII—Dallas)—Continental Gin Co., 26 War Lab. Rep. 606.

20.865 —Representation question

Uncertified and unrecognized union claiming to represent employees of in-

trastate concern is not entitled to maintenance of membership or check-off since it is against Board policy to determine union-security issues involving union which has not been certified or recognized as bargaining agent. Regional Board's award of such provisions is vacated.—Polk Sanitary Milk Corp., 26 War Lab. Rep. 301.

32. COLLECTIVE BARGAINING

32.400 Obligation to Bargain

32.415 —Change in company ownership

Certified union representing employees of company which is found to have changed its corporate structure in order to avoid duty of bargaining is entitled to maintenance of membership and other contract terms determined by Regional Board, provided that, if National Labor Relations Board finds that union's certification is not applicable to successor company, maintenance-of-membership clause should become null and void and remainder of contract should be subject to termination. Regional Board's order providing that directed terms should become effective only upon finding by NLRB that certification continues in effect is vacated. —F. H. Vahlsing, Inc., 26 War Lab. Rep. 287 (*amending* 22 War Lab. Rep. 606).

32.820 Unit for Bargaining

32.8201 —In general

★ Union representing longshoremen is not entitled to extension of contract's coverage to include car loading and certain other classifications where car loaders are at present covered by separate contracts so that question of change for them is within jurisdiction of National Labor Relations Board, and work of other classifications asked to be covered by contract is often performed by outside workers and through subcontractors. — Waterfront Employers Assn., 26 War Lab. Rep. 514.

32.847 —Supervisory employees

Union's request is granted that chef employed by intrastate club be included in bargaining unit and be covered by preferential hiring provision where union claimed that in all but two of largest establishments in industry in area head chef is classified as working chef and included in bargaining unit. Regional Board's order excluding chef is amended accordingly.—Olympic Club, 26 War Lab. Rep. 352 (*amending* 20 War Lab. Rep. 605).

32.857 —Unit determined by NLRB

★ Union representing longshoremen is not entitled to extension of contract's coverage to include car loading and certain other classifications where car loaders are at present covered by separate contracts so that question of change for them is within jurisdiction of National Labor Relations Board, and work of other classifications asked to be covered by contract is often performed by outside workers and through subcontractors. — Waterfront Employers Assn., 26 War Lab. Rep. 514.

Region V (Cleveland)

Union certified by NLRB as bargaining representative of patternmakers and patternmaker apprentices is entitled to represent employees classified as helpers if they are doing approximately same work as patternmakers or patternmaker apprentices where, subsequent to NLRB determination, it was discovered that company had classification of helpers. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

37. CONTRACTS

37.150 Assignment of Contract

★ Union's request that contract covering employees of Government-owned, privately operated plant should be made binding upon successors or assigns of company is denied.—Douglas Aircraft Co., 26 War Lab. Rep. 492.

37.350 Duration of Contract

37.351 —In general

★ Vacation, sick-leave, and wage provisions directed by Board or already in effect should be included in contract and continue in effect for duration of agreement despite contention of company that Board should not order such provisions to remain in effect beyond 60 days after termination of Board's existence.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 492.

37.365 —Extension of contract

Board vacates Regional Board's order directing inclusion in contract of clause providing that, if notice of termination or desire to revise agreement is given during war emergency, contract should be extended beyond termination date until new agreement is reached or matter is resolved by War Labor Board.—Alabama Mills, Inc., 26 War Lab. Rep. 12.

37.370 —Reopening provision

Union is entitled to provision in contract entitling it to reopen contract on ten days' notice in event of change in na-

tional wage policy, despite company's objections that such clause would work hardship on it since it is working on fixed-rate war contracts.—Goodyear Aircraft Corp., 26 War Lab. Rep. 279.

Petition for review of Regional order reducing straight-time hours and salaries is denied but denial is without prejudice to either party's right to reopen wage issue in event of change in national wage stabilization policy.—Reno & Sparks Nevada Grocery Industry, 26 War Lab. Rep. 296 (*amending* 21 War Lab. Rep. 308).

Contract may be reopened on wage question in event of substantial change in national wage policy.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 375.

★Union's request is refused that it be given power to establish penalty rates during contract period on commodities not now handled or not now covered by penalty rate schedule. Past experience does not support union's argument that character of cargoes is constantly changing and, in absence of demonstrated need for flux, advantages of certainty of rates for period of contract should not be sacrificed.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

Region IV (Atlanta)

Contract barring reopening of wage question except by agreement of parties is properly opened for consideration of wages, where contracting employer joined with union, after dispute came to Board, in signed stipulation for submission of issue of "wages" to hearing officer, rather than panel, for recommendation to Board. Employer is held to have thereby waived contractual right to bar reopening of wage question even though stipulation did not expressly so state. (Region IV—Atlanta)—Republic Creosoting Co., 26 War Lab. Rep. 345.

Region IV (Atlanta)

★Dispute of parties over shift differentials is not properly before Board since parties' contract, which provides for opening only by mutual consent, has not been properly opened despite contentions of union that company in effect agreed to opening by engaging in negotiations and by agreeing that disputed issue was "night-shift differentials". (Region IV—Atlanta)—Lansdowne Steel & Iron Co., 26 War Lab. Rep. 574.

Region V (Cleveland)

Union is not entitled to increase in rates of three job classifications since union is barred from raising wage issue at this time by provisions contained both in contract and in prior directive order prohibiting any but industry-wide adjustments in wage rates. Union's contention that its demands are industry-wide in that all firms in industry are being requested to eliminate intra-plant inequalities is rejected since union's demands vary from firm to firm. (Region V—Cleveland)—Firestone Tire & Rubber Co., 26 War Lab. Rep. 335.

37.600 Interpretation of Contract

West Coast Lumber Commission

Lumber pilers assigned to lower-rated jobs should receive rate of pay for such lower-rated jobs when assignment is made for convenience of employees. Order is within intent of parties' contract, which provides that company may, with their consent, transfer employees to lower-rated job in lieu of layoff and pay them at rate of position to which transfer is made. (West Coast Lumber Commission)—McGoldrick Lumber Co., 26 War Lab. Rep. 216.

Region IV (Atlanta)

Contract barring reopening of wage question except by agreement of parties is properly opened for consideration of wages where contracting employer joined with union, after dispute came to Board, in signed stipulation for submission of issue of "wages" to hearing officer, rather than panel, for recommendation to Board. Employer is held to have thereby waived contractual right to bar reopening of wage question even though stipulation did not expressly so state. (Region IV—Atlanta)—Republic Creosoting Co., 26 War Lab. Rep. 345.

Region V (Cleveland)

Union is not entitled to increase in rates of three job classifications since union is barred from raising wage issue at this time by provisions contained both in contract and in prior directive order prohibiting any but industry-wide adjustments in wage rates. Union's contention that its demands are industry-wide in that all firms in industry are being requested to eliminate intra-plant inequalities is rejected since union's demands vary from firm to firm. (Region V—Cleveland)—Firestone Tire & Rubber Co., 26 War Lab. Rep. 335.

37.822 Ratification of Contract

Region X (San Francisco)

Contract which was not ratified by local union's membership as required by resolution adopted at union meeting is not valid and binding, despite contention of company that it was clearly understood that all participants in negotiations were

authorized to preclude binding agreement on behalf of their respective parties. Injustice that may be done to employers by reopening negotiations is outweighed by resultant damages to stable relationship from compelling union members to accept agreement they rejected. (Region X—San Francisco)—Motion Picture Producers Assn., Inc., 26 War Lab. Rep. 318.

41. DEFINITIONS

41.650 Status Quo

Board affirms those parts of Regional Board's status quo order which (1) required company to reinstate both those employees who were suspended for violating shop rule effective in plant involved but not in plant from which they had recently been transferred and those employees who quit in sympathy and (2) permitted company to require that all reinstated employees observe disputed shop rule pending final disposition of dispute. Board, however, vacates that part of Regional order which (1) held that company had violated Regional Board's preliminary status quo order by making reinstatement of newly transferred employees conditional upon observance of shop rule and (2) ordered company to grant back pay to such employees for days lost between preliminary and final status quo orders.—General Motors Corp., 26 War Lab. Rep. 53.

42. DEMOTIONS AND DOWNGRADING

42.001 In General

★Employee may be assigned to lower-rated job classification only when (1) he is unable to meet requirements of present job, (2) sufficient work is not available, or (3) reassignment is requested by employee. —Douglas Aircraft Co., Inc., 26 War Lab. Rep. 492.

46. DISCHARGE AND REINSTATEMENT

46.150 Employer's Right to Discharge

★Board orders that discharged longshoremen should not be redispatched to employer who discharged him unless and until it is decided he was discharged without sufficient cause, where employers contended right of discharge is illusory if longshoreman discharged one day can be redispatched to same employer the next.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

46.200 Reason for Discharge

46.206 —Contract violation

Region I (Boston)

Contract should include clause agreed to by parties under which employer will discharge any member of union who does not comply with union laws or contract working conditions within 24 hours after receiving notice from union. (Region I—Boston)—U. S. Rubber Co., 26 War Lab. Rep. 85.

46.213 —Fighting

Company should reinstate with back pay and full seniority employee with twelve years' seniority discharged for violating strictly-enforced no-fighting rule, where discharged worker was deliberately provoked into attacking much younger, more robust employee with approximately three years' seniority, who wanted to obtain discharge of senior employee in order to protect his own job. As penalty for knowing violation of company's rule, employee should be penalized by denial of back pay for approximately three months of total time lost from work.—Lion Oil Refining Co., 26 War Lab. Rep. 46.

46.245 —Union activities

Region 1 (Boston)

Company was justified in discharging union member who, during rest periods, conducted mass meetings at which company was attacked and ridiculed and who, on several occasions, came late to work with excuse that he had been distributing union leaflets. Though union contended discharge was unfair labor practice, NLRB official refused to issue complaint in view of fact that company did not object to discussions during rest periods among small groups of workers but only to "organized aspects" of gatherings which employee in question conducted (Region V—Boston)—Fafnir Ball Bearing Co., 26 War Lab. Rep. 308.

46.255 —Work rules' violation

★Longshoremen engaged in a job assignment who fail to report and do not give union sufficient notice to permit union to obtain replacements shall pay fine to labor-management committee within 30 days from date of offense to avoid having name struck from registration list maintained at hiring hall. In event of failure to report or obtain replacement three times in any contract year, loss of registration shall be mandatory, reconsideration to be permitted only if offense was entirely beyond control of gang member.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

★ Penalties should be imposed on longshoremen for pilferage, drunkenness, and smoking in prohibited areas, maximum penalties for smoking and drunkenness to be discretionary with employer, but cancellation from registration at hiring hall to be mandatory on second offense for pilferage.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

46.350 Reinstatement by Board Order

46.410 —Reinstatement pending settlement of dispute

Board affirms those parts of Regional Board's status quo order which (1) required company to reinstate both those employees who were suspended for violating shop rule effective in plant involved but not in plant from which they had recently been transferred and those employees who quit in sympathy and (2) permitted company to require that all reinstated employees observe disputed shop rule pending final disposition of dispute. Board, however, vacates that part of Regional order which (1) held that company had violated Regional Board's preliminary status quo order by making reinstatement of newly transferred employees conditional upon observance of shop rule and (2) ordered company to grant back pay to such employees for days lost between preliminary and final status quo orders.—General Motors Corp., 26 War Lab. Rep. 53.

46.425 —Reinstatement with back pay

Company should reinstate with back pay and full seniority employee with twelve years' seniority discharged for violating strictly-enforced no-fighting rule, where discharged worker was deliberately provoked into attacking much younger, more robust employee with approximately three years' seniority, who wanted to obtain discharge of senior employee in order to protect his own job. As penalty for knowing violation of company's rule, employee should be penalized by denial of back pay for approximately three months of total time lost from work.—Lion Oil Refining Co., 26 War Lab. Rep. 46.

48. DISCRIMINATION

48.001 In General

★ Request of longshoremen's union for anti-discrimination clause is granted. Word "sex", however, is deleted from requested clause since some women might claim physical adequacy for longshoremen's work and open way for disputes.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

49. EMPLOYEES' BENEFITS

49.001 In General

Employer is not obligated to restore practice of giving free meals to cafeteria employees on request of union where there was no showing that abolition of free meals coincident with introduction of new wage schedule resulted in wage cut and no supporting practice in the area or industry exists.—Consolidated Vultee Aircraft Corp., 26 War Lab. Rep. 247.

★ Regional Board's order denying union's request that preemployment physical examinations be given on company's time is amended to specify that company should not discontinue its present practice of giving employees periodic medical examinations on company time.—Atlas Powder Co., 26 War Lab. Rep. 626.

49.300 Insurance Benefits

Region I (Boston)

Union's request for employer-financed insurance plan of type which is uniform in area is refused where company contended, among other things, that it already has contributory group life insurance plan in effect in all its plants and that to order another form of insurance for one plant only would have far-reaching repercussions on company's structure. (Region I—Boston)—U. S. Rubber Co., 26 War Lab. Rep. 85.

Region X (San Francisco)

Union's request that three wholesale jewelers contribute to group insurance plan administered by union is denied despite panel's findings that (1) 96½ per cent of firms and 99 per cent of similar employees in jewelry industry in area are covered by union's plan, (2) National Board has policy of awarding insurance plans under extraordinary circumstances, and (3) overwhelming area practice present in instant case constitutes such extraordinary circumstance. (Region X—San Francisco)—San Francisco Wholesale Jewelers, 26 War Lab. Rep. 78.

49.800 Sick Benefits

Regional Board's order directing company to grant 6 days' sick leave per year with full pay is vacated, despite fact that such plan is prevailing practice in industry in area, since Board will not order sick leave plans in dispute cases in absence of one of two following "unusual" circumstances: (1) In cases where unusual health hazards might justify paid sick leave, and (2) in cases where comparison of total benefits under other plans in operation at same company indicate inequity to employees involved in particular dispute.—Melville Shoe Corp., 26 War Lab. Rep. 30.

Company which has liberal group health insurance plan for employees with one or more years of service should grant three days' sick leave to employees with 6 to 12 months' service in accordance with its counterproposal to union's demand for six days' sick leave for all employees.—Melville Shoe Corp., 26 War Lab. Rep. 30.

Employees engaged in loading shells are not entitled to paid sick leave where employer compensates employees at two-thirds' pay for time lost due to industrial accidents prior to beginning of workmen's compensation payments. Regional Board's order granting six days' paid sick leave because of hazards of industry, accordingly, is vacated.—J-M Service Corp., 26 War Lab. Rep. 239 *(amending* 17 War Lab. Rep. 809).

✦Union's request for sick-leave plan is denied since exhibits introduced by union to prove hazards inherent in longshore work were inadequate to warrant departure from WLB's policy of not ordering sick-leave plans in dispute cases.—Waterfront Employers Assn., 26 War Lab. Rep. Rep. 514.

Region VII (Kansas City)

★Existing sick-leave plan should be modified to eliminate sex differential in rate of sick benefits since practice has no support in custom or reason. Decision constitutes adjustment in detail of plan to eliminate an inequity and, therefore, does not contravene WLB policy of not establishing or extending sick-leave plans in dispute cases. (Region VII—Kansas City)—Carter Carburetor Corp., 26 War Lab. Rep. 586.

55. ENFORCEMENT OF ECONOMIC STABILIZATION ACT

55.700 Unauthorized Wage Reductions

Territorial Board (Honolulu)

Company is ordered to restore, retroactively to date of its discontinuance, special premium paid drivers working without helpers which was instituted without Board approval. Company, having bound itself to pay special rate, even though unauthorized, could not later discontinue it without consulting Board. In view of fact that premium is excessive and unstabilizing, however, parties should negotiate and submit to Board for approval more reasonable allowance to go into effect after company has complied with retroactive requirement of order. (Territorial Board—Honolulu)—Dairymen's Assn., Ltd., 26 War Lab. Rep. 314.

60. GRIEVANCES

60.100 Right to Present Grievances

60.105 —Absence of lawful bargaining agent

Uncertified and unrecognized union claiming to represent employees of intrastate concern is entitled to establishment of grievance machinery under which employees may be represented by union steward in presentation of grievance and by union committee in furthering processing thereof. Grievances recognizable under procedure, however, are only those relating to interpretation or application of directed terms and conditions of employment, and Regional Board's order establishing procedure is amended accordingly.—Polk Sanitary Milk Corp., 26 War Lab. Rep. 301.

60.160 Means of Presenting Grievances

60.169 —Individual presentation

Employee may present grievance either individually or in presence of shop committeeman or, if employee so desires, grievance may be presented by shop committeeman, union to be notified of all grievances. Regional Board's order providing that grievances should be presented in presence of committeeman or by committeeman is amended accordingly.—Auburn Spark Plug Co., 26 War Lab. Rep. 240.

Individual employees are entitled to present grievances in person but company should notify union of all grievances filed and should negotiate with union concerning disposition of such grievances except those involving exclusively some question of fact or conduct peculiar to employee lodging grievance and not involving either interpretation of contract or question properly a subject of collective bargaining. Regional Board's order requiring presence of union steward during initial presentation of grievances and excluding individual employee from further processing of grievance is amended accordingly. —Ohio Brass Co., 26 War Lab. Rep. 250.

60.200 Definition of Grievances

60.220 —Grievance scope in absence of lawful bargaining agent

Uncertified and unrecognized union claiming to represent employees of intrastate concern is entitled to establishment of grievance machinery under which employees may be represented by union steward in presentation of grievance and by union committee in furthering process-

ing thereof. Grievances recognizable under procedure, however, are only those relating to interpretation or application of directed terms and conditions of employment, and Regional Board's order establishing procedure is amended accordingly. —Polk Sanitary Milk Corp., 26 War Lab. Rep. 301.

60.600 Pay for Grievance Representatives

Regional Board's order directing company to compensate union representatives for earnings lost while handling grievances is remanded for reconsideration, where company contended decision was in violation of National Board policy against ordering such compensation in dispute cases in absence of prior company practice.—Ohio Brass Co., 26 War Lab. Rep. 250.

60.700 Grievance Procedure

60.715 —Arbitration of grievances

Parties should negotiate arbitration clause to be included in their contract grievance procedure. If they fail to reach agreement in 30 days, issue should be returned to Board.—Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

60.726 — —Arbitrator designated by Board

★ Arbitrator provided for in grievance procedure of contract should be named by War Labor Board, despite contention of union that appointment should be made by U. S. Conciliation Service because Conciliation Service is permanent agency and Board should not assume duties which may run beyond its existence.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 492.

60.732 —Impartial umpire

★ Board grants longshoremen's request for replacement of coast arbitrator by impartial chairman who shall preside over bipartisan coast committee and cast deciding vote in case of tie, thus shortening present procedure under which grievances not decided by Coast Committee are referred to coast arbitrator who must either hold formal arbitration hearing himself or designate port agent to do so. If dispute is not of coast-wide significance, impartial chairman shall, at joint request of parties, appoint port arbitrator to determine dispute unresolved by labor relations committee of port.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

60.775 —Multi-step grievance procedure

★ Union's request that first step of grievance procedure be eliminated for any grievance affecting more than one employee in similar situation is denied since (1) such provision is not common in collective bargaining agreements and (2) award may lead to complication and confusion.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 492.

60.800 Subject Matter of Grievances

See also 60.220 above.

60.814 —Job rates

Company is entitled to establish new incentive rates, subject to appeal through grievance and arbitration machinery, in case of significant change in methods of operation on particular jobs or where new jobs are established. Regional Board's order prohibiting company from establishing any new incentive rates until new rate was either agreed to by union or decided by arbitrator, is amended accordingly.—G. F. Richter Mfg. Co., 26 War Lab. Rep. 362.

60.818 —Merit increases

Employer who has granted merit increases to between ten and thirty per cent of employees each quarter should negotiate with union objective standards of performance to be used in making quarterly reviews, claims of discrimination or improper application of such standards to be submissible to grievance procedure and arbitration.—Edward Ermold Co., 26 War Lab. Rep. 296 (*amending* 20 War Lab. Rep. 629).

★ Union is entitled to negotiate with company appropriate standards to be followed by company in making merit increases within rate ranges. Employees should be informed of results of merit review and may complain of company's action through contractual grievance machinery. If grievance is filed, employee involved and union shall receive full statement of reasons for company's decision.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 492.

60.856 —Wage inequalities

Union's request that, when employee's normal work assignment overlaps two or more classifications, he should be paid rate for highest classification is denied. As proposed by company, when it can be shown that such work assignment overlays two or more classified occupations, employee's classification may be submitted to grievance procedure.—Bell Aircraft Corp., 26 War Lab. Rep. 412.

60.860 —Working conditions

★ In addition to providing that company should continue past practice of supplying certain work clothes, contract should pro-

vide that any contention that such practice is not adequate to protect employees is subject to grievance machinery. Regional Board's order making subject to grievance procedure "questions concerning the propriety of furnishing the clothing" is amended accordingly.—Atlas Powder Co., 26 War Rep. 626.

65. HOURS OF WORK

See Shift Schedules: 162.

65.180 Call-In Time

Employee requested to work but sent home because of lack of work should receive minimum pay of three hours at his regular hourly rate, even though employee is prevented from working by existence of work stoppage in which he is not participating.—Firestone Rubber & Metal Products Co., 26 War Lab. Rep. 1.

★Employees of airframe company are entitled to four hours' reporting pay since provision is common in aircraft industry. Request for eight hours' reporting pay is denied as being far in excess of amount generally paid in airframe industry.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 492.

65.300 Meal Period

Employees working overtime are not entitled to be paid meal period where panel finds that (1) existing meal allowance of 60 cents is liberal when compared to industry and area practice and (2) demand for paid meal period does not conform to industry and area practice. Regional Board's order granting half hour's paid meal period when employees were required to work 1.5 hour's overtime without prior notice is vacated.—Carter Ink Co., 26 War Lab. Rep. 243.

65.410 Pay for Time Not Worked

★Demand for two hours off with pay on election days is refused.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

Region VIII (Dallas)

Employees reporting for or performing jury duty on regularly scheduled workday are entitled to straight-time pay for such days, despite contention of company that it has no voice in calling employees to appear for jury service and award would provide employees with double compensation, regular pay from company and jury fee from Government. (Region VIII—Dallas)—Firestone Tire & Rubber Co., 26 War Lab. Rep. 339.

65.500 Reduction of Working Hours

65.508 —Curtailment of operations

Region V (Cleveland)

Union of patternmakers is entitled to clause in first contract providing that there shall be no layoffs as long as there is sufficient work to provide employees average of 24 hours' work per pay period. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

65.515 —Hour reduction without reduction in pay

Region X (San Francisco)

★Retail meat shops should reduce straight-time workweek of butchers from 54 to 48 hours without reduction in pay where Board finds that employees perform no useful work during one hour's time they are required to spend on premises before and after opening and closing hours, respectively, and actual hours and actual amount of work performed will, therefore, remain unchanged. (Region X—San Francisco)—Employers Assn. of Southern Nevada, 26 War Lab. Rep. 583.

65.538 —Straight-time hour reduction

Employees are not entitled to adjustment of rates necessary to maintain weekly salaries at level prevailing before Regional Board reduced straight-time hours from 58 to 48 weekly. Petition for review of Regional order reducing hours and salaries is denied but denial is without prejudice to either party's right to reopening wage issue in event of change in national wage stabilization policy.—Reno & Sparks Nevada Grocery Industry, 26 War Lab. Rep. 296 (*amending* 21 War Lab. Rep. 308).

65.730 Travel Time

Employees of ordnance plant are not entitled to portal to portal pay, despite contention of union that employees must travel as much as 15 minutes from plant gate to place where they are required to report. Board is desirous that miscellaneous adjustments normally designed to meet special situation or problem should be worked out by parties themselves and Board has not, therefore, solved these issues except in unusual circumstances.—E. I. duPont de Nemours & Co., 26 War Lab. Rep. 67.

★Longshoremen presently paid one-way travel time from hiring hall to port are entitled to be uniformly paid both ways except that in San Francisco area, where parties are directed to negotiate on establishment of branch hiring hall, two-way

travel time shall not be paid until branch hiring hall is opened.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

65.800 Waiting Time

See Wages—Incentive Wage Systems, 260.184.

75. JOB CLASSIFICATIONS

75.050 Adjustment of Classifications

Airframe company and union should evaluate cafeteria jobs and place them within labor grades which are now applied to production and maintenance work. Company's main competitor in area has slotted its cafeteria jobs into its factory labor grades and similar slotting in instant case should eliminate whatever intra-plant inequities now exist in instant company.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

Regional Board's order requiring negotiation of rate ranges around weighted average of present rates in each occupation is amended by elimination of reference to weighted averages and by addition of proviso that negotiated rates should not result in average wage increase exceeding one per cent. Company contended that Regional restriction would require perpetuation of intra-plant inequities.—Chicago Flexible Shaft Co., 26 War Lab Rep. 401.

Southern airframe plant is directed to change present wage structure to make it substantially identical with that of Southern California airframe industry since, among other things, all but one of major airframe companies in southern area, which are within jurisdiction of Airframe Panel, maintain wage scales at or above SCAI levels. Order includes substantial increases for least skilled classifications, despite contention that such increases would be unstabilizing in low-wage area.—Bell Aircraft Corp., 26 War Lab. Rep. 412

Region III (Philadelphia)

Increased rate ranges previously approved by Board on joint application by parties should be applied, as demanded by union, so that all employees will occupy same relative position within new range as they occupied under old wage scale. Company's contention is rejected that preservation of existing intra-plant relationships under new rate ranges will result in average increase in excess of that originally approved by Board. (Region III—Philadelphia)—Atlantic Steel Castings Co., 26 War Lab. Rep. 102.

75.300 Establishment of Classifications

75.330 —Union approval of classifications

Regional Board order providing that company should grant union permission to review job classifications is modified to limit such review to "new" job classifications, where union's demands on this issue related to new classifications.—Zephyr Mfg. Co., 26 War Lab. Rep. 155.

77. JOB PROTECTION

77.050 Apprenticeship Rules

Employer's request that apprentice ratio be liberalized is denied since there is no likelihood of companies being able to hire more apprentices at present and union has, in past, showed willingness to relax ratio to meet particular needs. Contract should, however, provide for arbitration of any disputes arising from union's refusal to permit exceptions.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

77.220 Guaranteed Earnings

Contract should provide guarantee of 44 hours' work weekly for 52 consecutive weeks per year for full-time workers and for five nights and a Saturday weekly for 52 consecutive weeks per year for regular part-time employees where such provision is in effect in 95 per cent of union's contracts with other employers in industry in area. Company's petition for review of Regional Board's order directing such clause is denied.—Melville Shoe Corp., 26 War Lab. Rep. 30.

Contract should provide that provision requiring annual wage guarantee is not subject to arbitration, as ordered by Regional Board. (1) Union claims that "to grant company right to arbitrate permanent lay-offs if business conditions dictate such course would threaten security of workers" and (2) provision for no arbitration of guaranteed wage clause is in effect in 95 per cent of union's contracts with other employers in industry in area. Company's appeal for review is denied.—Melville Shoe Corp., 26 War Lab. Rep. 30.

77.260 Hour Reduction Before Layoffs

Region V (Cleveland)

Union of patternmakers is entitled to clause in first contract providing that there shall be no layoffs as long as there is sufficient work to provide employees average of 24 hours' work per pay period. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

78. JOB VACANCIES

78.300 Filling Vacant Jobs

Board vacates Regional Board's order providing that positions occupied by regular full-time or regular part-time employees but which become vacant for any reason whatsoever must be filled immediately by company with another worker, despite fact that such clause is in effect in 95 per cent of contracts which union has with other employers in industry in area. Company claimed that clause would require it to maintain full complement of salesmen regardless of future curtailment of business.—Melville Shoe Corp., 26 War Lab. Rep. 30.

82. JURISDICTION OF BOARD

82.100 Basis of Jurisdiction

Dispute of union with employer who has ceased business and moved to other state should be settled on merits by Regional Board since final decision in such situation may be rendered to extent that useful purpose will be served thereby.—Trav-Ler Karenola Radio & Television Corp., 26 War. Lab. Rep. 172.

82.300 Concurrent Jurisdiction with NLRB

82.307 —Bargaining unit

Region V (Cleveland)

Union certified by NLRB as bargaining representative of patternmakers and patternmaker apprentices is entitled to represent employees classified as helpers if they are doing approximately same work as patternmakers or patternmaker apprentices where, subsequent to NLRB determination, it was discovered that company had classification of helpers. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

82.500 Intrastate Business, Jurisdiction

Uncertified and unrecognized union claiming to represent employees of intrastate concern is not entitled to maintenance of membership or check-off since it is against Board policy to determine union-security issues involving union which has not been certified or recognized as bargaining agent. Regional Board's award of such provisions is vacated.—Polk Sanitary Milk Corp., 26 War Lab. Rep. 301.

82.700 Non-War Industries, Jurisdiction

82.710 —Charitable institution

Board rejects contention that it should dismiss dispute between group of nonprofit hospitals and union as dispute outside Board's jurisdiction since particular dispute was certified to Board almost one year prior to Board's determination not to decide any more disputes involving nonprofit organizations. Consideration of dispute is required by elementary principles of equity and finds abundant precedent in legislative practice which gives only prospective effect to statutory enactment.—New York Hospitals, 26 War Lab. Rep. 438.

82.850 Refusal of Jurisdiction

82.874 —Issue within NLRB jurisdiction

Certified union representing employees of company which is found to have changed its corporate structure in order to avoid duty of bargaining is entitled to maintenance of membership and other contract terms determined by Regional Board, provided that, if National Labor Relations Board finds that union's certification is not applicable to successor company, maintenance-of-membership clause should become null and void and remainder of contract should be subject to termination. Regional Board's order providing that directed terms should become effective only upon finding by NLRB that certification continues in effect is vacated.—F. H. Vahlsing, Inc., 26 War Lab. Rep. 287 (*amending* 22 War Lab. Rep. 606).

82.890 —Peacetime issue

★ Union's request that Board direct overtime and holiday provisions not permissible under Executive Order 9240, such provisions to become effective at termination of war, is denied in accordance with Board's policy of not ordering conditions that cannot presently be made effective.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 492.

82.891 —Plant no longer operating

Board refuses to act on union's request for union-shop clause since plant involved has been closed. Decision is without prejudice to union's right to reopen issue in event plant resumes operations.—Consolidated Vultee Aircraft Corp., 26 War Lab. Rep. 247.

82.930 Substantive Limitation on Jurisdiction

82.944 —Recognition dispute

Certified union representing employee of company which is found to have

changed its corporate structure in order to avoid duty of bargaining is entitled to maintenance of membership and other contract terms determined by Regional Board, provided that, if National Labor Relations Board finds that union's certification is not applicable to successor company, maintenance-of-membership clause should become null and void and remainder of contract should be subject to termination. Regional Board's order providing that directed terms should become effective only upon finding by NLRB that certification continues in effect is vacated.—F. H. Vahlsing, Inc., 26 War Lab. Rep. 287 (*amending* 22 War Lab. Rep. 606).

Uncertified and unrecognized union claiming to represent employees of intrastate concern is not entitled to maintenance of membership or check-off since it is against Board policy to determine union-security issues involving union which has not been certified or recognized as bargaining agent. Regional Board's award of such provisions is vacated.—Polk Sanitary Milk Corp., 26 War Lab. Rep. 301.

90. LAYOFFS

90.100 Advance Notice of Layoffs

★ Employees are not entitled to layoff pay when company fails to give two weeks' layoff notice, where company has practice of giving such notice whenever possible but is unable to guarantee notice since property is Government-owned and production may be stopped on very short notice.—Atlas Powder Co., 26 War Lab. Rep. 626.

110. MAINTENANCE OF MEMBERSHIP

110.100 Reason for Awarding Maintenance of Membership

110.101 —In general

Union representing employees of interstate bus company is entitled to standard maintenance-of-membership and compulsory check-off provisions. — Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

110.126 —Employer hostility to union

Union whose membership was "wholly dissipated" by unfair labor practices of company is not entitled to award of preferential hiring in addition to maintenance of membership to restore union's representative status. Regional Board's order directing both maintenance of membership and preferential shop is modified by elimination of preferential-hiring clause. —Ellis-Klatscher Co., 26 War Lab. Rep. 161 (*amending* 21 War Lab. Rep. 485).

110.165 —Responsible union

Union of newspaper employees is entitled to maintenance of membership, despite finding of Newspaper Commission that union was irresponsible on grounds that it (1) demanded changes in contract prior to expiration, (2) repudiated agreement made by union representatives prosecuting case before Commission, and (3) failed to assume responsibility for strict maintenance of contract. Commission's order denying maintenance of membership is therefore reversed where Commission found that union had kept its no-strike pledge and had democratic constitution. Commission is requested, in view of Board's action on maintenance of membership issue, to issue order on union's request for check-off.—New York Herald-Tribune, 26 War Lab. Rep. 18 (*reversing* 22 War Lab. Rep. 430).

★ Responsible union is entitled to standard maintenance-of-membership provision with compulsory check-off.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 492.

110.220 Reason for Denying Maintenance of Membership

110.260 —Irresponsible union

Board reverses order of Newspaper Commission which denied maintenance of membership on finding that union was irresponsible where Commission also found that union had kept its no-strike pledge and had democratic constitution.—New York Herald-Tribune, 26 War Lab. Rep. 18 (*reversing* 22 War Lab. Rep. 430).

110.279 —Strike after no-strike agreement

Regional Board properly denied, for six-month period, maintenance-of-membership clause of prior contract because union members engaged in four strikes. Such denial, however, should not bar consideration of issue in new case presently pending before Board and maintenance of membership should be restored to union effective from termination of six-month penalty period if union's record since issuance of Regional order is found to be satisfactory.—Bower Roller Bearing Co., 26 War Lab. Rep. 185.

110.281 —Union not bargaining agent

Uncertified and unrecognized union claiming to represent employees of intrastate concern is not entitled to mainte-

nance of membership or check-off since it is against Board policy to determine union-security issues involving union which has not been certified or recognized as bargaining agent. Regional Board's award of such provisions is vacated.—Polk Sanitary Milk Corp., 26 War Lab. Rep. 301.

110.340 Membership Maintenance Without Escape Clause

Union is entitled to union-security clause previously adopted by parties, providing for hiring through union, but not to further provisions directed by Regional Board on basis of practice in industry in area, namely, maintenance of membership without escape clause, preferential hiring, and provision that new employees hired outside union may be bumped by union members during first 30 days of their employment.—Olympic Club, 26 War Lab. Rep. 352 (*amending* 20 War Lab. Rep. 605).

Maintenance-of-membership provision awarded union should contain 15-day escape clause. Regional Board's order eliminating escape clause is amended accordingly despite union's contention that protracted negotiations gave employees year's period within which to withdraw from membership.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 375.

110.480 Conditional Maintenance-of-Membership Award

Certified union representing employees of company which is found to have changed its corporate structure in order to avoid duty of bargaining is entitled to maintenance of membership, provided that, if National Labor Relations Board finds that union's certification is not applicable to successor company, maintenance-of-membership clause should become null and void.—F. H. Vahlsing, Inc., 26 War Lab. Rep. 287 (*amending* 22 War Lab. Rep. 185.

110.897 Renewal of Maintenance-of-Membership Clause

Regional Board properly denied, for six-month period, maintenance-of-membership clause of prior contract because union members engaged in four strikes. Such denial, however, should not bar consideration of issue in new case presently pending before Board, and maintenance of membership should be restored to union effective from termination of six-month penalty period if union's record since issuance of Regional order is found to be satisfactory.—Bower Roller Bearing Co., 26 Lab. Rep. 185.

114. MANAGERIAL FUNCTIONS

114.400 Job Rates, Determination

Company is entitled to establish new incentive rates, subject to appeal through grievance and arbitration machinery, in case of significant change in methods of operation on particular jobs or where new jobs are established. Existing incentive system, however, may not be changed or extended to hourly-rated jobs without consent of union. Regional Board's order prohibiting company from establishing any new incentive rates until new rate was either agreed to by union or determined by arbitrator is amended accordingly.—G. F. Richter Mfg. Co., 26 War Lab. Rep. 362.

114.875 Work Force Size

Board vacates Regional Board's order providing that positions occupied by regular full-time or regular part-time employees but which become vacant for any reason whatsoever must be filled immediately by company with another worker. Company claimed that clause would require it to maintain full complement of salesmen regardless of future curtailment of business.—Melville Shoe Corp., 26 War Lab. Rep. 30.

135. PREFERENTIAL SHOP

135.200 Hiring Preference for Union Members

135.220 —Hiring preference combined with membership maintenance

Union whose membership was "wholly dissipated" by unfair labor practices of company is not entitled to award of preferential hiring in addition to maintenance of membership to restore union's representative status. Regional Board's order directing both maintenance of membership and preferential shop is modified by elimination of preferential-hiring clause. —Ellis-Klatscher Co., 26 War Lab. Rep. 161 (*amending* 21 War Lab. Rep. 485).

Union is entitled to union-security clause previously adopted by parties, providing for hiring through union, but not to further provisions directed by Regional Board on basis of practice in industry in area, namely, maintenance of membership without escape clause, preferential hiring, and provision that new employees hired outside union may be bumped by union members during first 30 days of their employment.—Olympic Club, 26 War Lab. Rep. 352 (*amending* 20 War Lab. Rep. 605).

140. PREMIUM WAGE RATES

140.200 Holiday Premium

140.201 —In general

★Union is entitled to substitution of statewide Election Days for General Election Day as holidays for which time and one-half is paid under contract, where such substitution will bring about uniformity in holiday practices of four West Coast ports. Demand for two hours' off with pay on election days, however, is refused.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

140.230 —Award of holiday premium

Milk distributors should pay time and one-half for sixth-day work and for six holidays worked and doubletime for seventh-day work, as required by Premium Pay Order, despite contention that it is improper for Board to apply provisions of Order to industry which has been specifically exempted from Order by Secretary of Labor. Exemption is merely finding that Order is not mandatory in industry. Board has authority to require practices prescribed by Order where special circumstances, such as area practice in instant case, warrant such action.—Toledo Milk Distributors, 26 War Lab. Rep. 355.

Region III (Philadelphia)

Transit company employees are entitled to time and one-half for work performed on any one of four specified annual holidays but, in accordance with industry practice, are not entitled to be paid when holiday is not worked. (Region III—Philadelphia) — Philadelphia Transportation Co., 26 War Lab. Rep. 120.

140.240 —Denial of holiday premium

140.278 —Pay on holidays not worked

Employees are not entitled to straight-time pay for six annual holidays not worked, as ordered by Regional Board, where company contends that there is complete lack of industry, area, or company practice to support such order.—Paraffine Cos., 26 War Lab. Rep. 162.

Employees are not entitled to straight-time pay for holidays not worked since such payment is contrary to industry and area practice. Regional Board's order granting pay for religious holidays not worked is, therefore, vacated.—M. Davidson & Sons, 26 War Lab. Rep. 270.

Hospitals should continue present practices concerning pay for holidays not worked. Regional Board's order requiring that number of paid holidays be increased from 10 to 11 in two hospitals and from 8 to 11 in third is amended accordingly.—New York Hospitals, 26 War Lab. Rep. 438.

Region III (Philadelphia)

Transit company employees are entitled to time and one-half for work performed on any one of four specified annual holidays but, in accordance with industry practice, are not entitled to be paid when holiday is not worked. (Region III—Philadelphia) — Philadelphia Transportation Co., 26 War Lab. Rep. 120.

140.282—Postwar holiday pay

★Union's request that Board direct overtime and holiday provisions not permissible under Executive Order 9240, such provisions to become effective at termination of war, is denied in accordance with Board's policy of not ordering conditions that cannot presently be made effective.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 492.

140.400 Overtime

140.405 —Computation of overtime

For purposes of determining obligation to pay time and one-half for work after first five days of workweek, employer should count as full workday any day on which work is not made available to employee where employer has agreed to such rule in computing sixth day of workweek but objects to application for purposes of computing seventh day of workweek.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 375.

★For purposes of computing overtime pay, basic skill differentials and basic penalty cargo rates should be considered as part of rate for job.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

140.415 —FLSA-exempt employees

Overtime for interstate bus drivers on regularly assigned runs other than straight-away runs should begin after 8 hours in a spread of 10, as requested by union, rather than after 8 hours in a spread of 11, as at present.—Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

Region III (Philadelphia)

Restaurant employees in five department stores are entitled to receive time and one-third for hours in excess of 8 a day or between 40 and 44 a week and time and one-half for all hours in excess of 44 a week. Premium pay ordered will correct intra-plant inequity both within unit comprising restaurant employees and between restaurant employees and remaining department store employees. (Region III—Philadelphia)—Labor Standards Assn., 26 War Lab. Rep. 231.

140.417 —Peacetime overtime rate

★Union's request that Board direct overtime and holiday provisions not permissible under Executive Order 9240, such provisions to become effective at termination of war, is denied in accordance with Board's policy of not ordering conditions that cannot presently be made effective. —Douglas Aircraft Co., Inc., 26 War Lab. Rep. 492.

140.472 —Relaxation of overtime provisions

★Employer's request is refused for restoration of basic 8-hour day which prevailed prior to 1934 when National Longshoremen's Board awarded 6-hour day, with payment of time and one-half thereafter, for purpose of spreading employment. Though purpose of 6-hour day was not achieved, Board will not change 11-year practice initiated through award of Presidential Board and extended by collective bargaining.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

140.500 Seventh-Day Premium

140.502 —Application of seventh-day premium

For purposes of determining obligation to pay time and one-half for work after first five days of workweek, employer should count as full workday any day on which work is not made available to employee where employer has agreed to such rule in computing sixth day of workweek but objects to application for purposes of computing seventh day of workweek.—Douglas Aircraft Co., Inc., 26 War Lab. 375.

140.510 —Doubletime for seventh consecutive day

Milk distributors should pay time and one-half for sixth-day work and for six holidays worked and doubletime for seventh-day work, as required by Premium Pay Order, despite contention that it is improper for Board to apply provisions of Order to industry which has been specifically exempted from Order by Secretary of Labor. Exemption is merely finding that Order is not mandatory in industry. Board has authority to require practices prescribed by Order where special circumstances, such as area practice in instant case, warrant such action.—Toledo Milk Distributors, 26 War Lab. Rep. 355.

140.549 —Time and one-half for seventh day

Interstate bus drivers working on their regular day off are entitled to receive not less than eight hours' pay at time and one half their regular rate.—Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

140.550 Shift Premium

140.565 —Nightwork premium

Newspaper Commission's denial of night-shift premiums for editorial employees is affirmed. If issue should arise in connection with new contract, however, Commission is requested to examine issue in light of Board's decisions since date of Commission's order and in light of any changed circumstances since issue was last considered.—New York Herald-Tribune, 26 War Lab. Rep. 18.

Region III (Philadelphia)

Transit company employees are entitled to premium of four cents per hour for all work performed between 6 p.m. and 6 a.m. despite fact that no important industry practice exists supporting award, since nightwork premiums are so generally paid throughout industry in general. Premiums shall not be put into effect, however, until award has been "pre-reviewed" and approved by National Board. (Region III—Philadelphia) —Philadelphia Transportation Co., 26 War Lab. Rep. 120.

140.575 —Rotating-shift premium

Employees of milling company operating rotating shifts are not entitled to night-shift premiums granted by Regional Board where Regional award was not justified by industry or area practice.—International Milling Co., 26 War Lab. Rep. 447.

★Employees on continuous, rotating shifts are entitled to night-shift premiums of four cents on the second shift and six cents on the third shift. Regional Board's order granting premiums of five and ten cents an hour, respectively, is amended accordingly.—Atlas Powder Co., 26 War Lab. Rep. 626.

Region I (Boston)

★Employees of oil refinery operating on rotating shifts are not entitled to night-shift differentials, despite panel's contrary recommendation, where such differentials are practically nonexistent in industry. Panel considered that award of shift premiums would be unstabilizing but that it was mandatory under WLB policy because current rates do not include compensation for shift work. (Region I—Boston)—Cities Service Oil Co., 26 War Lab. Rep. 567.

Region VIII (Dallas)

★Rotating-shift workers are not entitled to night-shift bonuses. Compensation for late-shift work is deemed to have been included in basic wage rate, where, among other things, (1) average rate of shift workers is 12.3 cents higher than average rate of day workers, (2) night-shift

bonuses are contrary to industry-area practice, and (3) company's rates are at or above minimum going rates. Region VIII —Dallas)—Tidewater Associated Oil Co., 26 War Lab. Rep. 578.

140.589 —Second-shift and third-shift premiums

Union's request that lace manufacturers establish second-shift premium is denied since lace manufacturing is part of textile industry and second-shift premiums are not generally paid in textile industry, having been denied by National Board in recent textile cases.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

Plant protection employees in powder plant are entitled to night-shift premiums of four and six cents for work on second and third shifts respectively. Regional Board's order granting five and and ten cents on basis of area practice is amended accordingly, Regional Board having resolved doubt in favor of premium although employer claimed that base rates included compensation for night work.—Atlas Powder Co., 26 War Lab. Rep. 142 (*amending* 21 War Lab. Rep. 196.)

Board's prior order directing company to establish second-shift and third-shift premiums of four and six cents respectively is interpreted as not requiring company to add such premiums to base pay for incentive workers for purpose of computing incentive pay since purpose of order was to establish uniform amounts of shift premiums for all employees.—Sheet Glass Cos., 26 War Lab. Rep. 246.

Region IV (Atlanta)

Employees are entitled to shift differentials of four cents for second shift and six cents for third shift, less average value per hour of paid half-hour lunch periods granted by company. Dissenting labor members contend that Board exceeded its authority in injecting into dispute over shift premiums non-disputed issue of paid lunch period and that deduction of lunch-period pay is unprecedented negation of shift-premium award. (Region IV—Atlanta)—General Chemical Co., 26 War Lab. Rep. 457.

Region V (Cleveland)

Employees of company manufacturing industrial electric motor controls are entitled to have present night-shift premiums of five cents for second shift and ten cents for third increased to ten cents for both second and third shifts on basis of Regional Board's resolution that night-shift differential of ten cents an hour shall be granted for plants in electrical industry. Company's contention that area practice must govern is rejected. (Region V—Cleveland)—Electric Controller & Mfg. Co., 26 War Lab. Rep. 109.

140.600 Sixth-Day Premium

140.601 —Application of sixth-day premium

Under contract requiring company to pay time and one-half for sixth day of workweek, each day of the first five on which the company fails to make eight hours of work available being counted as a day worked, employer is not obligated to pay time and one-half for sixth day when one of the first five is a holiday, which, in accordance with contract, is not worked and is paid for at straight time.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 282.

140.610 —Time and one-half for sixth day

Milk distributors should pay time and one-half for sixth-day work and for six holidays worked and doubletime for seventh-day work, as required by Premium Pay Order, despite contention that it is improper for Board to apply provisions of Order to industry which has been specifically exempted from Order by Secretary of Labor. Exemption is merely finding that Order is not mandatory in industry. Board has authority to require practices prescribed by Order where special circumstances, such as area practice in instant case, warrant such action.—Toledo Milk Distributors, 26 War Lab. Rep. 355.

140.670 Special Premium Rate

140.671 —In general

Territorial Board (Honolulu)

Company is ordered to restore, retroactively to date of its discontinuance, special premium paid drivers working without helpers which was instituted without Board approval. Company, having bound itself to pay special rate, even though unauthorized, could not later discontinue it without consulting Board. In view of fact that premium is excessive and unstabilizing, however, parties should negotiate and submit to Board for approval more reasonable allowance to go into effect after company has complied with retroactive requirement of order. (Territorial Board—Honolulu)—Dairymen's Assn., Ltd., 26 War Lab. Rep. 314.

140.677 —Hazardous work premium

As compensation for additional risk, flight technicians are entitled to $1.50 per hour in addition to regular pay for all time spent in testing, adjusting, recording, and operating aircraft equipment during

test flights. Minimum of $1.50 shall be paid for first ascension of any day.—Southern California Aircraft Industry, 26 War Lab. Rep. 379.

★ Union's request for premium rate for extra hazardous work is denied where (1) company contended that hazard was considered in evaluating jobs and (2) parties' contract permits employees to refuse to do work which employee thinks involves health hazard until joint committee determines that job has been made safe.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 492.

★ Employees are entitled to (1) increase in penalty rate for handling explosives and damaged cargo to eliminate inequity between West Coast penalty rates and those paid on East Coast, (2) extension of coverage of penalty rates on some cargoes so as to include handling of obnoxious cargoes under conditions not now requiring penalty, and (3) provision that receipt of penalty rate shall not render employee ineligible for skill differential. Union's demand for application of penalty rate to handling of reclaimed war material and poison gas is refused.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

★ Union's request is refused that it be given power to establish penalty rates during contract period on commodities not now handled or not now covered by penalty rate schedule. Past experience does not support union's argument that character of cargoes is constantly changing and, in absence of demonstrated need for flux, advantages of certainty of rates for period of contract should not be sacrificed.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

143. PROCEEDINGS BEFORE BOARD

143.300 Fair Hearing

Regional Board's order eliminating beginners' and learners' rates is remanded with instruction that hearing be held on merits of issue. Company contends that it was never given opportunity to be heard on merits.—Laclede Steel Co., 26 War Lab. Rep. 438 *(remanding* 23 War Lab. Rep. 595).

155. SENIORITY

155.285 Equal Seniority for Women

Region XI (Detroit)

★ Company is not entitled to establish separate seniority lists for male and female clerical workers despite fact that company's general practice is to establish such dual seniority lists. Union's request for single seniority list is granted since seniority is proper matter for collective bargaining and nature of clerical work, as contrasted with factory work, does not justify separate seniority lists. (Region XI—Detroit)—General Motors Corp., 26 War Lab. Rep. 601.

155.290 Exception to Seniority Provisions

Region V (Cleveland)

Board reverses prior order and grants union's request for discontinuance of clause of prior contract which provided that employees hired subsequent to Sept. 6, 1943, should be subject to replacement upon conclusion of war. Union contended, among other things, that retention of clause would permit favoritism in layoffs and that existing 30-day probationary period gives company adequate opportunity to weed out undesirables. (Region V—Cleveland)—Reynolds Metal Co., Inc., 26 War Lab. Rep. 95 *(reversing* 24 War Lab. Rep. 360).

155.400 Layoff and Rehiring

155.408 —Inter-bargaining unit seniority

Parties should negotiate issue of interplant seniority for older employees. Board vacates Regional order providing that, in event of layoff, employees hired prior to Dec. 7, 1941, may displace junior employees on same jobs in company's other plants in which union is bargaining agent.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 375 *(amending* 25 War Lab. Rep. 229).

Region XI (Detroit)

★ Employees transferred between clerical and production bargaining units represented by locals of same international union are entitled to retain seniority where (1) order represents company's past practice and (2) both bargaining representatives are agreeable to such provision. Order should not, however, operate to permit employees in one unit to replace employees within other unit in event of a layoff. (Region XI—Detroit)—General Motors Corp., 26 War Lab. Rep. 601.

155.420 —Seniority as preference basis

As applied to layoffs, reemployment, transfers, promotions, and demotions, seniority should govern where ability and skill are substantially equal. Regional Board's order providing that seniority shall be governing factor only if ability is relatively equal is modified accordingly.—Mines Equipment Co., 26 War Lab. Rep. 148.

155.500 Promotion Preference

155.540 —Length of service as preference basis

As applied to layoffs, reemployment, transfers, promotions, and demotions, seniority should govern where ability and skill are substantially equal. Regional Board's order providing that seniority shall be governing factor only if ability is relatively equal is modified accordingly.—Mines Equipment Co., 26 War Lab. Rep. 148.

155.555 Seniority Unit

Region XI (Detroit)

★Employees transferred between clerical and production bargaining units represented by locals of same international union are entitled to retain seniority where (1) order represents company's past practice and (2) both bargaining representatives are agreeable to such provision. Order should not, however, operate to permit employees in one unit to replace employees within other unit in event of a layoff. (Region XI—Detroit)—General Motors Corp., 26 War Lab. Rep. 601.

155.580 Supervisory Employees

Employees promoted to supervisory positions not covered by contract are entitled to retain their seniority rights for duration of war.—Firestone Rubber & Metal Products Co., 26 War Lab. Rep. 1.

155.600 Transfers

As applied to layoffs, reemployment, transfers, promotions, and demotions, seniority should govern where ability and skill are substantially equal. Regional Board's order providing that seniority shall be governing factor only if ability is relatively equal is modified accordingly. —Mines Equipment Co., 26 War Lab. Rep. 148.

161. SEVERANCE PAY

161.001 In General

Employees of airframe company are not entitled to award of severance pay since it would not be "fair and equitable" to compel severance pay under circumstances prevailing in aircraft industry where (1) it was known from start of war production that postwar aircraft production would amount to only small perecentage of wartime volume and (2) virtually entire aircraft program is financed by Government and cost of any severance pay plan would have to be borne by Government.—Consolidated Vultee Aircraft Corp., 26 War Lab. Rep. 350.

161.500 Military Severance Pay

★In accordance with established policy, Board denies union's request that employees entering armed forces be granted severance pay.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 492.

161.700 Severance Pay in Lieu of Layoff Notice

★Employees are not entitled to layoff pay when company fails to give two weeks' layoff notice, where company has practice of giving such notice whenever possible but is unable to guarantee notice since property is Government-owned and production may be stopped on very short notice.—Atlas Powder Co., 26 War Lab. Rep. 626.

162. SHIFT SCHEDULES

162.300 Modification of Schedules

★Company's request that it be given right to change agreed-upon shift hours at direction of governmental agencies is denied. Union contends that (1) requested clause would permit company to change shifts unilaterally under "guise of direction of some procurement agency", thereby nullifying bargaining rights guaranteed by National Labor Relations Act, and (2) if valid reason for change arises and workers are consulted prior to institution of change, there will be no need for requested provision.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 492.

165. STRIKES

165.100 Board Procedure in Strike Cases

Board affirms those parts of Regional Board's status quo order which (1) required company to reinstate both those employees who were suspended for violating shop rule effective in plant involved but not in plant from which they had recently been transferred and those employees who quit in sympathy and (2) permitted company to require that all reinstated employees observe disputed shop rule pending final disposition of dispute.—General Motors Corp., 26 War Lab. Rep. 53.

165.400 No-Strike Agreement in Contract

165.445 —Violation of no-strike, no-lockout clause

Contract should provide that there shall be no strikes or lockouts for period of contract. Regional Board's order providing

for no strikes, lockouts, interference with production, and picketing and directing that any employee, supervisory or otherwise, who violates or advocates violation of contract should be disciplined on first offense and discharged on second offense is vacated.—Alabama Mills, Inc., 26 War Lab. Rep. 12.

165.500 Penalty for Strike After No-Strike Agreement

165.540 —Union security denial

Regional Board properly denied, for six-month period, maintenance-of-membership clause of prior contract because union members engaged in four strikes. Such denial, however, should not bar consideration of issue in new case presently pending before Board, and maintenance of membership should be restored to union effective from termination of six-month penalty period if union's record since issuance of Regional order is found to be satisfactory.—Bower Roller Bearing Co., 26 War Lab. Rep. 185.

Union which engaged in wartime strikes is not entitled to union-security order. Denial is without prejudice to right of either party to ask for reconsideration six months after date of order.—Bell Aircraft Corp., 26 War Lab. Rep. 412.

172. UNION AFFAIRS

172.245 Expulsion From Union

Region V (Cleveland)

Union is entitled to union-shop clause where such clause was contained in company's contract with predecessor independent union. Employees not accepted for union membership or suspended by union for violation of constitution should be discharged, provided that they may later be reinstated without accumulated seniority if company and union so agree. (Region V—Cleveland)—Buckeye Forge Co., 26 War Lab. Rep. 464.

172.400 Posting Union Notices

Union is entitled to post official notices on company-furnished bulletin board after notices have been approved by plant personnel department, as was provided in prior contract. Union is not entitled, however, to post notices unapproved by company, as was provided by Regional Board, where company claimed prior provision is part of all contracts between it and other unions and no claim was made that company ever abused its discretion.—Paraffine Cos., 26 War Lab. Rep. 163.

172.600 Union Activity on Company Time and Property

Region I (Boston)

Company was justified in discharging union member who, during rest periods, conducted mass meetings at which company was attacked and ridiculed and who, on several occasions, came late to work with excuse that he had been distributing union leaflets. Though union contended discharge was unfair labor practice, NLRB official refused to issue complaint in view of fact that company did not object to discussions during rest periods among small groups of workers but only to "organized aspects" of gatherings which employee in question conducted. (Region I—Boston)—Fafnir Ball Bearing Co., 26 War Lab. Rep. 308.

172.790 Union Representatives, Selection

★ Employers' request is refused that hiring hall dispatcher, now selected by longshoremen's union, shall be selected from among union membership by labor-management committee. Dispatchers shall be selected by union, but through elections in which all candidates shall qualify according to standards prescribed and measured by union-management committee, and shall hold office for one year. Both employers and union shall be permitted to maintain representative in each hiring hall at all times.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

185. UNION RECOGNITION

185.200 Bargaining Recognition

See Collective Bargaining, 32.400.

185.500 Grievance Recognition

Uncertified and unrecognized union claiming to represent employees of intrastate concern is entitled to establishment of grievance machinery under which employees may be represented by union steward in presentation of grievance and by union committee in furthering processing thereof. Grievances recognizable under procedure, however, are only those relating to interpretation or application of directed terms and conditions of employment, and Regional Board's order establishing procedure is amended accordingly.—Polk Sanitary Milk Corp., 26 War Lab. Rep. 301.

190. UNION SECURITY (not elsewhere classified)

190.450 Reason for Denying Union Security

190.465 —Violation of no-strike pledge

Union which engaged in wartime strikes is not entitled to union-security order. Denial is without prejudice to right of either party to ask for reconsideration six months after date of order.—Bell Aircraft Corp., 26 War Lab. Rep. 412.

190.480 Union Hiring Hall

★Union which has preferential hiring rights under present contract which provides for hiring hall is refused request that preference of full registration be given union members since purpose of request is to abridge right of employers to offer objections when names come up for registration. Employers, as well as union, have interest in character and quality of longshoremen employed.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

★Longshoremen presently paid one-way travel time from hiring hall to port are entitled to be uniformly paid both ways except that in San Francisco area, where parties are directed to negotiate on establishment of branch hiring hall, two-way travel time shall not be paid until branch hiring hall is opened.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

★Employers' request is refused that hiring hall dispatcher, now selected by longshoremen's union, shall be selected from among union membership by labor-management committee. Dispatchers shall be selected by union, but through elections in which all candidates shall qualify according to standards prescribed and measured by union-management committee, and shall hold office for one year. Both employers and union shall be permitted to maintain representative in each hiring hall at all times.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

195. UNION SHOP

195.600 Reason for Denying Union Shop

Board refuses to act on union's request for union-shop clause since plant involved has been closed. Decision is without prejudice to union's right to reopen issue in event plant resumes operations. —Consolidated Vultee Aircraft Corp., 26 War Lab. Rep. 247.

195.700 Retention of Prior Union-Shop Provision

195.701 —In general

Region X (San Francisco)

Union is entitled to continuation of union-shop clause contained in expired contract pending settlement of new contract terms. Dissenting industry members contend that clause had become dead letter in old agreement and its vitalization now will place company in position where it must choose between forcing present employees to join union, replacing entire staff, or closing down operations. (Region X — San Francisco) — Associated Dairy Products, 26 War Lab. Rep. 473.

195.703 —Prior contract with predecessor union

Region II (New York)

Union is entitled to union-shop clause contained in predecessor union's contract with modification to permit continued employment of prison parolees whom union has refused to admit to membership. Company's contention that union-shop clause will interfere with production because certain key employees would quit rather than join union and labor is scarce in area is rejected. (Region II—New York) —Chazy Lime and Stone Co., 26 War Lab. Rep. 459.

Region V (Cleveland)

Union is entitled to union-shop clause where such clause was contained in company's contract with predecessor independent union, thereby establishing custom in employer-employee relations which should not now be disturbed. Employees not accepted for union membership or suspended by union for violation of constitution should be discharged, provided that they may later be reinstated without accumulated seniority if company and union so agree. (Region V—Cleveland)—Buckeye Forge Co., 26 War Lab. Rep. 464.

195.710 —Employees excepted from union-shop requirement

Region II (New York)

Union is entitled to union-shop clause contained in predecessor union's contract with modification to permit continued employment of prison parolees whom union has refused to admit to membership. (Region II—New York)—Chazy Lime and Stone Co., 26 War Lab. Rep. 459.

205. VACATIONS

205.100 Vacation with Pay

205.106 —Award of paid vacation

Interstate bus company should grant 6 days' vacation to employees with one to

five years' service and 12 days' vacation to employees with five or more years' service, method of computing vacation pay to be determined by parties.—Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

★Longshoremen are entitled to establishment of paid vacation of one week, method of financing vacations, eligibility requirements and other details to be negotiated by parties. In event of failure to reach agreement within 30 days, either party may refer issue back to Board for final decision.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

205.112 —Eligibility for paid vacation

Full vacation allowance should be paid to drivers who are discharged by interstate bus company or who leave company's employ to enter armed services.—Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

One year's seniority for purpose of determining vacation eligibility under contract should be defined as 12 months on company's payroll, as proposed by union, rather than, as proposed by company, 12 months of continuous service.—Consolidated Vultee Aircraft Corp., 26 War Lab. Rep. 350.

★Employees who are eligible for vacation pay by virtue of seniority but who are unable to satisfy other eligibility requirements of contract because of lay-offs due to reduction in war production are entitled to one-half of their normal vacation pay, where company made similar provision for laid-off employees when plant was undergoing conversion to war production. Employees downgraded because of cut in war production shall be entitled to vacation pay on basis of pay rate immediately preceding downgrading.—General Motors Corp., 26 War Lab. Rep. 513.

205.150 —Vacation pay, computation

Limitation on amount of employees' vacation pay should be increased from 40 to 48 hours per week where company is operating on scheduled 48-hour week.—Consolidated Vultee Aircraft Corp., 26 War Lab. Rep. 350.

★Employees who are eligible for vacation pay by virtue of seniority but who are unable to satisfy other eligibility requirements of contract because of lay-offs due to reduction in war production are entitled to one-half of their normal vacation pay, where company made similar provision for laid-off employees when plant was undergoing conversion to war production. Employees downgraded because of cut in war production shall be entitled to vacation pay on basis of pay rate immediately preceding downgrading.—General Motors Corp., 26 War Lab. Rep. 513.

★Unions' request that overtime and night-shift premiums be included in computing vacation pay is denied.—General Motors Corp., 26 War Lab. Rep. 513.

Region III (Philadelphia)

★Vacation pay should be computed on basis of average number of hours worked by individual or 40 hours, whichever is greater. Company's request that vacation pay be limited to maximum of 48 hours in accordance with National Board's decision in Basic Steel case is denied. (Region III—Philadelphia)—American Chain & Cable Co., Inc., 26 War Lab. Rep. 573.

Region II (New York)

In computation of vacation pay on basis of straight-time average hourly earnings, shift premiums should be included since, under National Board's policy, only factor to be excluded under term "straight-time earnings" is premium pay for overtime work. (Region II—New York)—American Smelting & Refining Co., 26 War Lab. Rep. 333.

205.300 Vacation Plan

205.320 —Liberalized plan

205.323 — —Award of liberalized plan

Lace employees, all of whom now receive one week's vacation with pay equal to two per cent of annual earnings, are entitled to liberalization of vacation plan to provide second week's vacation after five years' service since (1) National Board granted second week's vacation in cotton garment case and (2) branches of textile industry in which only one week is granted are also branches in which employers provide group insurance at cost of about two per cent of payroll. Because of manpower shortage and to prevent depriving other employees of work during extended vacation shutdown, however, employers are granted option of giving pay in lieu of second week's vacation.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

As directed by Regional Board, employees are entitled to second week's vacation after five years of service, but Regional Board's order granting pro-rated vacations between one and five years is vacated.—Zephyr Mfg. Co., 26 War Lab. Rep. 155.

Employees of shell loading plant who now receive one week's vacation after six months' service are also entitled to second week's vacation after five years' service on basis of practice in area. Regional Board's order denying liberalization of vacation

plan is amended accordingly.—J-M Service Corp., 26 War Lab. Rep. 239.

Regional Board's order granting standard one-for-one and two-for-five vacation plan and providing for prorated vacation benefits for years between one and five is modified by removal of proration clause. —M. Davidson & Sons, 26 War Lab. Rep. 270.

★ Employees are entitled to Board's standard vacation plan of one week for one year of service and two weeks for five years of service. Regional Board's order also granting 1.5 week's vacation for three years of service is modified accordingly, where employers contend that award is contrary to industry practice.—Associated Mirror Manufacturers, Inc., 26 War Lab. Rep. 489.

Region I (Boston)

★ Employees with 15 years' continuous service are entitled to three weeks' vacation, such provision being in addition to present practice of one week's vacation after one year of service and two weeks after two years. Six of sixteen comparable plants, including only plant in immediate area, grant three weeks after 15 years of service. (Region I—Boston)—Cities Service Oil Co., 26 War Lab. Rep. 567.

205.326 — —Denial of liberalized plan

★ Unions' requests that automobile company's vacation plan be liberalized to provide prorated vacations and to provide greater amounts of vacation pay than one and two weeks to employees with one and five years' service, respectively, are denied. —General Motors Corp., 26 War Lab. Rep. 513.

205.332 —Plan less liberal than prior practices

Bonus of three per cent of straight-time earnings which was previously paid to all employees in lieu of vacations should be continued with respect to employees who, at time of vacation period, are not eligible for vacation under vacation plan directed by Regional Board. Board accordingly amends Regional Board's order which directed elimination of bonus plan and establishment of one-for-one and two-for-five vacation plan with vacation pay being three and four per cent of straight-time earnings for one and two weeks' vacation, respectively.—American Brake Shoe Co., 26 War Lab. Rep. 209.

205.334 —Prorated vacations

Regional Board's order awarding prorated vacation benefits to employees having two to four years' service is referred back to Regional Board for reconsideration in light of area and industry practice.—G. F. Richter Mfg. Co., 26 War Lab. Rep. 362.

★ Employees are entitled to Board's standard vacation plan of one week for one year of service and two weeks for five years of service. Regional Board's order granting in addition 1.5 week's vacation for three years of service is modified accordingly, where employers contend that award is contrary to industry practice.—Associated Mirror Manufacturers, Inc., 26 War Lab. Rep. 489.

★ Unions' requests that automobile company's vacation plan be liberalized to provide prorated vacations and to provide greater amounts of vacation pay than one and two weeks to employees with one and five years' service, respectively, are denied.—General Motors Corp., 26 War Lab. Rep. 513.

205.700 Bonus in Lieu of Vacation

Bonus of three per cent of straight-time earnings which was previously paid to all employees in lieu of vacations should be continued with respect to employees who, at time of vacation period, are not eligible for vacation under vacation plan directed by Regional Board. Board accordingly amends Regional Board's order which directed elimination of bonus plan and establishment of one-for-one and two-for-five vacation plan with vacation pay being three and four per cent of straight-time earnings for one and two weeks' vacation, respectively.—American Brake Shoe Co., 26 War Lab. Rep. 209.

225. WAGE ADJUSTMENTS (not elsewhere classified)

225.100 Ability to Pay Increased Wages

225.137 —Ability to pay immaterial

Region VIII (Dallas)

Laundry employees are entitled to general eight-cent increase requested by union to correct substandards and maintain intra-plant differentials, such increase bringing minimum rate up to 40 cents an hour and being made retroactive to expiration date of prior contract. Contention that present wage level is already above level supportable by laundry industry generally in region and that, therefore, award is harsh and unrealistic is rejected since award is clearly justified under substandards policy and it is against WLB policy for Board to consider ability to pay. (Region VIII—Dallas)—Galveston Model Laundry et al., 26 War Lab. Rep. 224.

225.300 Effective Date of Wage Adjustments

225.305 —Date of Board order

★Increases in penalty rates for handling certain types of cargo should be retroactive to expiration date of prior contract but penalty rates for work not previously covered thereby should become effective as of date of Board's order.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

225.330 —Retroactive effective date

225.331 — —In general

Awarded wage adjustments should be retroactive to date on which parties met with Conciliation Commissioner after written presentation of request for awarded adjustment. Parties' prior agreements have been informal and unwritten and Board's customary criteria for determining retroactive dates, therefore, are not applicable.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

"Hours-of-work" clause which had been agreed upon by parties in October 1944 but which was not submitted by company on Form 10 until February 1945 should be made effective as of date shortly after date of agreement, since employer should not be permitted to gain by his delay in submitting Form 10 and awarded date is fair under all circumstances of case.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 282.

225.338 — —Certification of dispute to Board

Wage adjustments directed by Board in dispute over first contract should be made retroactive to certification date of dispute. —Bell Aircraft Corp., 26 War Lab. Rep. 412.

Retroactive date for awarded wage adjustments should be date of certification of dispute to Board rather than date of expiration of last contract between union and non-profit hospital.—New York Hospitals, 26 War Lab. Rep. 438.

Region V (Cleveland)

Awarded adjustments should be retroactive to date on which union first presented specific demands to company subsequent to its certification by NLRB. Minority contends that decision contravenes National Board's policy of making first contracts retroactive only to date on which dispute is certified to WLB. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

225.343 — —Contract negotiations, commencement

Region V (Cleveland)

Awarded adjustments should be retroactive to date on which union first presented specific demands to company subsequent to its certification by NLRB. Minority contends that decision contravenes National Board's policy of making first contracts retroactive only to date on which dispute is certified to WLB. (Region V—Cleveland)—Superior Pattern Co., 26 War Lab. Rep. 96.

Region XII (Seattle)

Wage adjustments ordered by Board should be retroactive to date on which negotiations for wage increase began rather than to earlier date on which contract expired where negotiation for new contract was delayed for long period and there is no evidence that employer was in any way responsible for delay. In view of fact that prior contract did exist, however, Board sets retroactive date as date on which negotiations began rather than later date on which dispute was certified to Board. (Region XII—Seattle)—Pacific Fruit and Produce Co., 26 War Lab. Rep. 129.

225.344 — —Contract reopening date

Awarded wage increase should be retroactive to date about one month after union served notice that it desired to reopen contract.—Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

225.346 — —Date agreed to by parties

Board's prior order approving parties' agreement on retroactive date is amended on employer's request to require that adjustments be made retroactive to agreed-upon date.—Sheet Glass Cos., 26 War Lab. Rep. 246.

Effective date of directed decrease in incentive rate should be agreed upon by parties. Regional Board's order setting date one week earlier is amended accordingly.—Aluminum Company of America, 26 War Lab. Rep. 297.

225.348 — —Date specified by Board

Hazardous work premium directed by Board should be made retroactive to date one month after union petitioned for establishment of such premium.—Southern California Aircraft Industry, 26 War Lab. Rep. 379.

225.353 — —Expiration date of prior contract

★Increases in penalty rates for handling certain types of cargo should be retroactive to expiration date of prior contract but penalty rates for work not previously covered thereby should become effective as of date of Board's order.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

Region VIII (Dallas)

Laundry employees are entitled to general eight-cent increase requested by union to correct substandards and maintain intra-plant differentials, such increase bringing minimum rate up to 40 cents an hour and being made retroactive to expiration date of prior contract. Contention that present wage level is already above level supportable by laundry industry generally in region and that, therefore, award is harsh and unrealistic is rejected since award is clearly justified under substandards policy and it is against WLB policy for Board to consider ability to pay. (Region VIII—Dallas)—Galveston Model Laundry et al., 26 War Lab. Rep. 224.

225.364 — —Going rates effective

Wage adjustments directed by Regional Board on basis of area foundry rates established pursuant to "rare and unusual" proceedings should be made retroactive to same date as were rates in "rare and unusual" cases. Board's prior order making instant adjustments retroactive only to date on which "rare and unusual" rates were approved by Regional Board is amended accordingly.—Pettibone Mulliken Corp., 26 War Lab. Rep. 162 *(amending* 24 War Lab. Rep. 625).

225.379 — —Panel hearing

Wage adjustments which result from directed reclassification of cafeteria jobs should be retroactive only to date of panel hearing. Panel recommended no retroactivity on ground that, prior to hearing, union had made only generalized and unapprovable wage demands and had not requested any adjustment of cafeteria jobs as such.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

225.396 — —Wages first became issue in negotiations

Region XI (Detroit)

Awarded wage adjustments should be retroactive to date of commencement of negotiations on wages rather than to earlier date of expiration of prior contract or later date of certification of dispute where (1) negotiations on wages were not undertaken until several months after signing of current contract, which contained no provision as to retroactivity, and (2) conciliator delayed in referring dispute to WLB. (Region XI—Detroit)—Nineteen Hundred Corp., 26 War Lab. Rep. 467.

Region XII (Seattle)

Wage adjustments ordered by Board should be retroactive to date on which negotiations for wage increase began rather than to earlier date on which contract expired where negotiations for new contract was delayed for long period and there is no evidence that employer was in any way responsible for delay. In view of fact that prior contract did exist, however, Board sets retroactive date as date on which negotiations began rather than later date on which dispute was certified to Board. (Region XII—Seattle) —Pacific Fruit and Produce Co., 26 War Lab. Rep. 129.

225.398 Computation of Retroactive Adjustment

Computation of sums due employees under retroactive application of directed wage-progression plan should be left to parties for settlement reasonably related to principles of established plan, increases granted since retroactivity date to be offset against amounts otherwise due. Regional Board's order setting forth specific method of computation is vacated.—Mines Equipment Co., 26 War Lab. Rep. 148.

Merit increases employees would have earned under directed, semi-automatic progression plan should be computed and paid as of retroactive date specified in Regional Board's order. Employer is not required, however, for purpose of such computations, to credit employees with six months of service prior to retroactive date, as ordered by Regional Board.—G. F. Richter Mfg. Co., 26 War Lab. Rep. 362.

225.630 Length-of-Service Wage Increases

Employees in lower grade hourly-rated jobs are entitled to automatic in-grade progression to eliminate intra-plant inequity caused by fact that automatic progression is in effect for comparable incentive workers.—Chicago Flexible Shaft Co., 26 War Lab. Rep. 401.

Region VII (Kansas City)

★ Employees whose performance meets requirements of jobs are entitled to length-of-service progression to mid-point of range, while adjustments beyond mid-point should be made on basis of merit as determined by company, where union contends that historic practice of granting automatic progressions existed and company contends that no such plan had been in effect. Grievances over both types of progressions are submissible to contractual grievance and arbitration machinery. Board rescinds its previous order granting automatic increases to mid-point, such directive having been remanded by National Board. (Region VII—Kansas City)—Witte Engine Works, 26 War Lab. Rep. 596.

Region XI (Detroit)

Employees are entitled to automatic progression to mid-point of respective rate ranges within period of not less than four months for unskilled jobs, six months for semi-skilled jobs, and eight months for skilled jobs. (Region XI—Detroit)—Nineteen Hundred Corp., 26 War Lab. Rep. 467.

225.640 Merit Wage Increases

Parties should submit to board of arbitration under contract question of whether change in "employee evaluation plan" made by company and resulting in reduction in rates within established rate range is arbitrable. If question is found to be arbitrable under contract, arbitrators should determine it finally. Industry members dissent, contending that Board, by directing arbitration, is avoiding ruling on novel question, namely, whether employers have right under merit rating plans to give "demerits" within rate ranges as well as merit increases.—Boeing Airplane Co., 26 War Lab. Rep. 50.

Computation of sums due employees under retroactive application of directed merit increase plan should be left to parties for settlement reasonably related to principles of established plan, increases granted since retroactivity date to be offset against amounts otherwise due. Regional Board's order setting forth specific method of computation is vacated.—Mines Equipment Co., 26 War Lab. Rep. 148.

Employer who had granted merit increases to between ten and thirty per cent of employees each quarter should negotiate with union objective standards of performance to be used in making quarterly reviews, claims of discrimination or improper application of such standards to be submissible to grievance procedure and arbitration. Amount of merit increases is limited to overall average of ten cents per hour in any year. Board accordingly amends Regional Board's order, which required grant of merit increases to all employees making "normal progress" subject to same ten-cent limitation.—Edward Ermold Co., 26 War Lab. Rep. 296 (*amending* 20 War Lab. Rep. 629).

Merit increases employees would have earned under directed, semi-automatic progression plan should be computed and paid as of retroactive date specified in Regional Board's order. Employer is not required, however, for purpose of such computations, to credit employees with six months of service prior to retroactive date, as ordered by Regional Board.—G. F. Richter Mfg. Co., 26 War Lab. Rep. 362.

★ Union is entitled to negotiate with company appropriate standards to be followed by company in making merit increases within rate ranges. Employees should be informed of results of merit review and may complain of company's action through contractual grievance machinery. If grievance is filed, employee involved and union shall receive full statement of reasons for company's decision. —Douglas Aircraft Co., Inc., 26 War Lab. Rep. 492.

Region VII (Kansas City)

★ Employees whose performance meets requirements of job are entitled to length-of-service progression to mid-point of range, while adjustments beyond mid-point should be made on basis of merit as determined by company, where union contends that historic practice of granting automatic progressions existed and company contends that no such plan had been in effect. Grievances over both types of progressions are submissible to contractual grievance and arbitration machinery. Board rescinds its previous order granting automatic increases to mid-point and making increases beyond mid-point subject to General Order 31, such directive having been remanded by National Board. (Region VII—Kansas City)—Witte Engine Works, 26 War Lab. Rep. 596.

Region XI (Detroit)

Employees are entitled to automatic progression to midpoint of respective rate ranges within period of not less than four months for unskilled jobs, six months for semi-skilled jobs, and eight months for skilled jobs, and to merit increases thereafter, each employee being judged against objective standards of performance which parties may negotiate or company should make known to union. (Region XI—Detroit)—Nineteen Hundred Corp., 26 War Lab. Rep. 467.

225.700 Overtime Earnings and Wage Adjustments

★ West Coast longshoremen awarded 5-cent cost-of-living increase are not entitled to further adjustment to eliminate alleged inequity between hourly rates paid for work on East Coast and rates paid on West. Though lower hourly rate is paid on West Coast, equity is maintained with East Coast rates by fact that West Coast employers pay time and one-half overtime rate after six, rather than eight, hours a day.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

225.755 Reduction in Wage Rates

225.764 —Piece rate reduction

Company is not entitled to reduce disputed incentive rate by 21 per cent but is

entitled to reduce it by 7 per cent in accordance with hearing officers' finding that 7 per cent reduction is justified by improvements made in machine involved. Company's petition for review of Regional Board's order is denied.—Aluminum Company of America, 26 War Lab. Rep. 297.

225.770 Review of Wage Rates

225.780 —Contract provision for reopening wage issue

See Contracts: 37.370.

225.900 Voluntary Wage Adjustment

225.940 —Retroactive effect for voluntary adjustments

"Hours-of-work" clause which had been agreed upon by parties in October 1944 but which was not submitted by company on Form 10 until February 1945 should be made effective as of date shortly after date of agreement, since employer should not be permitted to gain by his delay in submitting Form 10 and awarded date is fair under all circumstances of case.—Dogulas Aircraft Co., Inc., 26 War Lab. Rep. 282.

225.945 —Wage approval cases

Region III (Philadelphia)

Increased rate ranges previously approved by Board on joint application by parties should be applied, as demanded by union, so that all employees will occupy same relative position within new range as they occupied under old wage scale. Company's contention is rejected that preservation of existing intra-plant relationships under new rate ranges will result in average increase in excess of that originally approved by Board. (Region III —Philadelphia)—Atlantic Steel Castings Co., 26 War Lab. Rep. 102.

225.968 Wage Increase to Offset Shorter Hours

Employees are not entitled to adjustment of rates necessary to maintain weekly salaries at level prevailing before Regional Board reduced straight-time hours from 54 to 48 weekly. Petition for review of Regional order reducing hours and salaries is denied but denial is without prejudice to either party's right to reopen wage issue in event of change in national wage stabilization policy.—Reno & Sparks Nevada Grocery Industry, 26 War Lab. Rep. 296 (*amending* 21 War Lab. Rep. 308).

Region X (San Francisco)

★Retail meat shops should reduce straight-time workweek of butchers from 54 to 48 hours without reduction in pay where Board finds that employers perform no useful work during one hour's time they are required to spend on premises before and after opening and closing hours, respectively, and actual hours and actual amount of work performed will, therefore, remain unchanged. (Region X—San Francisco)—Employers Assn. of Southern Nevada, 26 War Lab. Rep. 583.

235. WAGE DIFFERENTIALS

235.180 Inter-Industry Differential

Union's request that maintenance rates be increased in line with rates paid by company's subcontractors to construction employees is denied since rates paid to construction workers are generally higher than rates paid in industry in general.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

235.220 Job Content as Basis of Differential

★Union's request for uniform minimum skill differentials in all four West Coast ports for five classifications is denied except for classification of winch drivers which constitutes sole group whose different treatment in various ports is without satisfactory reason.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

245. WAGES—COST-OF-LIVING ADJUSTMENTS

245.300 15 Per Cent Rule

245.310 —Application of 15 per cent rule

245.3101 — —In general

Newspaper Commission's order denying union request for application of increase due under Little Steel formula to all minimum rates but granting increase in one classification and modifying minimum rates for several other classifications is affirmed. Commission is requested, however, to examine question of raising contract minima in light of Board decisions made subsequent to date on which Commission's order was issued and in light of any changed circumstances since case was considered by Commission.—New York Herald-Tribune, 26 War Lab. Rep. 18.

Newspaper Commission's award of general increase of $2.50 weekly to employees earning less than $50 is remanded for reconsideration in light of current policies. Award was made on basis of finding that, under interpretation by War Labor Board of arbitration award involving same parties and involving question of calculation of Little Steel increase, employees were

entitled to further average increase of 77 cents a week. Instead of granting 77 cents to all employees, however, Commission made equivalent award of $2.50 to employees earning less than $50 on ground that it is WLB policy to favor low-paid employees in making cost-of-living adjustments.—New York Herald-Tribune, 26 War Lab. Rep. 18.

245.313 — —Base date for 15 per cent rule

★ Employees are entitled to 5-cent cost-of-living increase retroactive to expiration date of prior contract, despite fact that general increases equal to 15 per cent have been granted since Jan. 1, 1941, where one general 5-cent increase, though granted within period covered by Little Steel formula, was made pursuant to contract completed prior to Jan. 1, 1941, and should not, therefore, be charged against Little Steel allowance.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

245.315 — —Employees paid commissions

Commission-paid taxi drivers are not entitled to increases amounting to 15 per cent of average daily earnings in January 1941, as directed by Regional Board, where present earnings are substantially greater than earnings in 1941 without additional effort on part of employees. Wage question is returned to parties for negotiation with particular reference to establishment of minimum guarantee and, if no settlement is reached within 30 days, Board will direct reasonable guarantee.—Sunshine Cab Corp., 26 War Lab. Rep. 349 *(amending* 17 War Lab. Rep. 476).

245.317 — —Individual wage adjustments

Employees of mail order house are entitled to seven-cent general increase under 15 per cent rule, despite company's contention that increases granted in minimum rates and to groups of individuals constitute general increases satisfying rule. Treatment of such increases as merit increases rather than general increases is in accordance with decision in earlier case involving same issue at another plant of company. Awarded increase should be applied to minima and maxima of existing rate ranges as well as to individuals.—Montgomery Ward & Co., 26 War Lab. Rep. 451.

245.3195 — —Unit for application of rule

Regional Board should reconsider denial of Little Steel wage adjustment to employees of one commercial printing firm where denial was result of applying formula to the three commercial printers in area as a unit. Parties contended (1) that Little Steel increase would be due if formula were applied to instant company as separate unit and (2) that, although rates are identical with those paid by other two firms, they are below those paid by newspapers in area—Lyons, Harris & Brooks Printing Co., 26 War Lab. Rep. 197.

245.340 —Prior increases exceeding 15 per cent

Union's request for general wage increase is denied since, among other things, prior increases since Jan. 1, 1941, have exceeded 15 per cent.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

In addition to increased minimum job rates, employees of hospitals are entitled to four-cent increase in rates paid to individuals to correct inter-plant inequities but are not entitled to 15 per cent cost-of-living increases awarded to all employees by Regional Board since no increase is due under 15 per cent rule.—New York Hospitals, 26 War Lab. Rep. 438.

250. WAGES—GOING WAGE RATES

250.050 Application of Going Rate Criterion

250.051 —In general

Region I (Boston)

Union of bakery salesmen negotiating first contract with companies in local area where majority of firms are unorganized is entitled to wage increase from $16 per week plus 7 per cent commission to $16 per week plus 8 per cent commission, despite contention that very large proportion of baking industry in New England area is covered by master contract requiring rate of $18 and 8 per cent commission. Present award will go part way toward eliminating inequity between instant companies and majority of industry in New England area but will not equalize rates of newly organized companies competing in unorganized territory with rates of companies that have been under contract for eight years. (Region I—Boston) —Genest Bros., Inc., Drake Bakeries, Inc., 26 War Lab. Rep. 111.

250.052 —Appropriate bracket

Union's request that maintenance rates be increased in line with rates paid by company's subcontractors to construction

employees is denied since rates paid to construction workers are generally higher than rates paid in industry in general.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

250.060 —Incentive work

Regional Board's order raising base pay of commission and non-commission bakery driver salesmen from $55 to $60 for 48-hour workweek is vacated where, contrary to WLB policy, Regional Board included incentive earnings in data used in setting bracket in order to justify $60 bracket.—Seattle Bakers Bureau, Inc., 26 War Lab. Rep. 201.

250.100 Adjustment to Minimum Going Rates

Drivers employed by interstate bus company are entitled to increase bringing rate for first two years to 3.5 cents per mile and rate after two years to 4 cents where (1) company offered such rates on basis of rates paid by local bus companies with which it competes and (2) average rate paid by all bus companies in states served by company is 4.23 cents per mile. Such award is without prejudice to determination of any further increase justified by slowdown regulation of Office of Defense Transportation. — Missouri-Pacific Transportation Co., 26 War Lab. Rep. 261.

Patternmakers are entitled to increase in wage rate to bring their rate up to minimum of revised bracket established by Regional Board, and employees in two interrelated job classifications are entitled to corresponding rate increases so that proper intra-plant differentials may be maintained.—Goodyear Aircraft Corp., 26 War Lab. Rep. 279.

Hospitals should establish specified minimum job rates and should deduct from wages no more than specified amounts for value of room and meals furnished to employees where Regional Board so directed on ground that order corrected substandard rates below 50 cents an hour and represented conservative application of going rates applicable to similar occupations in other industries.—New York Hospitals, 26 War Lab. Rep. 438.

In addition to increased minimum job rates, employees of hospitals are entitled to four-cent increase in rates paid to individuals to correct inter-plant inequities but are not entitled to 15 per cent cost-of-living increases awarded to all employees by Regional Board since no increase is due under 15 per cent rule.—New York Hospitals, 26 War Lab. Rep. 438.

250.200 Adjustment Above Minimum Going Rates

250.205 —Denial of adjustment

Union requests for general wage increase is denied since existing rates are among highest in area and prior increases since Jan. 1, 1941, have exceeded 15 per cent. —Curtiss-Wright Corp., 26 War Lab. Rep. 134.

Employees of aircraft company's cafeteria are not entitled to wage increase where existing rates were approved by Board approximately one year ago and are those presently in effect in other comparable companies.—Consolidated Vultee Aircraft Corp., 26 War Lab. Rep. 247.

★ West Coast longshoremen awarded 5-cent cost-of-living increase are not entitled to further adjustment to eliminate alleged inequity between hourly rates paid for work on East Coast and rates paid on West. Though lower hourly rate is paid on West Coast, equity is maintained with East Coast rates by fact that West Coast employers pay time and one-half overtime rate after six, rather than eight, hours a day.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

250.220 —Industry rate stabilization

Southern airframe plant is directed to change present wage structure to make it substantially identical with that of Southern California aircraft industry since, among other things, all but one of major airframe companies in southern area, which are within jurisdiction of Airframe Panel, maintain wage scales at or above SCAI levels. Order includes substantial increases for least skilled classifications, despite contention that such increases would be unstabilizing in low-wage area.—Bell Aircraft Corp. 26 War Lab. Rep. 412.

★ Union and Tulsa, Ariz., airframe plant should negotiate upon applicable provisions of Board orders establishing basic wage rates and job classifications in Southern California airframe industry. Union's request that all such orders be extended to instant plant is denied.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 492.

250.300 Determination of Going Rates

Regional Board's order raising base pay of commission and non-commission bakery driver salesmen from $55 to $60 for 48-hour workweek is vacated where, contrary to WLB policy, Regional Board included incentive earnings in data used in setting bracket in order to justify $60 bracket.—Seattle Bakers Bureau, Inc., 26 War Lab. Rep. 201.

250.960 Transit Industry Formulae

250.967 —Suburban transit line

Region XII (Seattle)

Rate of suburban bus drivers is raised from $1.00 to $1.05 per hour since (1) under national transit policy suburban rates may be raised to next five-cent interval below average transit rate in area in April 1944, (2), as result of retroactive adjustment of rate of dominant property from $1.05 to $1.08, average rate effective in area on April 1, 1944, was above rather than below $1.05, and (3) wartime changes in conditions justify reduction in differential between suburban and dominant rates, Prior denial of increase, which was based on assumption that dominant company's April 1944 rate was $1.05, is therefore reversed. (Region XII—Seattle)—East Side Busses, Inc., et al., 26 War Lab. Rep. 93.

260. WAGES—INCENTIVE WAGE SYSTEMS

260.100 Adjustment of Piece Rates

260.124 —Intra-company inequities

Lace manufacturers should grant five per cent increase in contractural minimum incentive rate (minimum rack price) since (1) parties came very close to agreeing on such increase, (2) not more than 40 per cent of employees will be benefited thereby, such employees being lowest paid group, and (3) essential purpose of increase is to eliminate intra-plant inequities.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

260.130 —Reduction in piece rates

Company is not entitled to reduce disputed incentive rate by 21 per cent but is entitled to reduce it by 7 per cent in accordance with hearing officer's finding that 7 per cent reduction is justified by improvements made in machine involved. Company's petition for review of Regional Board's order is denied.—Aluminum Company of America, 26 War Lab. Rep. 297.

260.184 Downtime

Union's request that lace manufacturers pay for work of tying in beams, as such, is denied since, among other things, (1) for years existing incentive rates have, in effect, compensated for machine downtime necessary for tying in beams and (2) union failed to present any factual data showing that there is loss of earnings on styles where there are many beams.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

260.200 Establishment of Incentive Rates

Company is entitled to establish new incentive rates, subject to appeal through grievance and arbitration machinery, in case of significant change in methods of operation on particular jobs or where new jobs are established. Existing incentive system, however, may not be changed or extended to hourly-rated jobs without consent of union. Regional Board's order prohibiting company from establishing any new incentive rates until new rate was either agreed to by union or determined by arbitrator, is amended accordingly.—G. F. Richter Mfg. Co., 26 War Lab. Rep. 362.

260.270 General Increase to Offset Lower Incentive Earnings

Region V (Cleveland)

★ Present incentive plan should be modified to (1) pay standard rate of pay for 95 per cent of standard production rather than for 100 per cent of standard and (2) grant 5-cent increase to employees earning new standard rate or more, where only 30 per cent of employees receive earnings under incentive system. Although plan may have been properly timed for personnel employed several years ago, present work force, consisting largely of women, is unable to earn sufficient amount under present plan. (Region V—Cleveland)—Martin Bros. Box Co., 26 War Lab. Rep. 588.

260.600 Modification of Incentive Plan

Although company is entitled to establish new incentive rates, subject to appeal through grievance and arbitration machinery, existing incentive system may not be changed or extended to hourly-rated jobs without consent of union.—G. F. Richter Mfg. Co., 26 War Lab. Rep. 362.

Region V (Cleveland)

★ Present incentive plan should be modified to (1) pay standard rate of pay for 95 per cent of standard production rather than for 100 per cent of standard and (2) grant 5-cent increase to employees earning new standard rate or more, where only 30 per cent of employees receive earnings under incentive system. Although plan may have been properly timed for personnel employed several years ago, present work force, consisting largely of women, is unable to earn sufficient amount under present plan. (Region V—Cleveland)—Martin Bros. Box Co., 26 War Lab. Rep. 588.

265. WAGES—INEQUALITIES

265.100 Inequalities as Reason for Wage Adjustment

265.135 —Inequalities within plant

Lace manufacturers should grant five per cent increase in contractual minimum incentive rate (minimum rack price) since (1) parties came very close to agreeing on such increase, (2) not more than 40 per cent of employees will be benefited thereby, such employees being lowest paid group, and (3) essential purpose of increase is to eliminate intra-plant inequities.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

Union's request that lace manufacturers pay for work of tying in beams, as such, is denied since, among other things, (1) for years existing incentive rates have, in effect, compensated for machine downtime necessary for tying in beams and (2) union failed to present any factual data showing that there is loss of earnings on styles where there are many beams.—American Lace Mfrs. Assn., Inc., 26 War Lab. Rep. 56.

Airframe company and union should evaluate cafeteria jobs and place them within labor grades which are now applied to production and maintenance work Company's main competitor in area has slotted its cafeteria jobs into its factory labor grades and similar slotting in instant case should eliminate whatever intra-plant inequities now exist in instant company. —Curtiss-Wright Corp., 26 War Lab Rep. 134.

Patternmakers are entitled to increase in wage rate to bring their rate up to minimum of revised bracket established by Regional Board, and employees in two interrelated job classifications are entitled to corresponding rate increases so that proper intra-plant differentials may be maintained.—Goodyear Aircraft Corp., 26 War Lab. Rep. 279.

265.158 —Inequalities between unionized plants

Region I (Boston)

Union of bakery salesmen negotiating first contract with companies in local area where majority of firms are unorganized is entitled to wage increase from $16 per week plus 7 per cent commission to $16 per week plus 8 per cent commission, despite contention that very large proportion of baking industry in New England area is covered by master contract requiring rate of $18 and 8 per cent commission. Higher rate is result of eight years' negotiation and present award, which is equal to rates paid by majority of industry prior to Trucking Commission's directive order fixing $18 and 8 per cent for master contract, will go part way toward eliminating inequity between instant companies and majority of industry in New England area but will not equalize rates of newly organized companies competing in unorganized territory with rates of companies that have been under contract for eight years. (Region I—Boston)—Genest Bros., Inc., Drake Bakeries, Inc., 26 War Lab. Rep. 111.

265.300 Creation of Inequalities as Ground for Denying Adjustment

Union's request that maintenance rates be increased in line with rates paid by company's subcontractors to construction employees is denied, since among other things, requested adjustments would create inequalities in plant's existing job classification system.—Curtiss-Wright Corp., 26 War Lab. Rep. 134.

275. WAGE—JOB RATES

275.130 Highest Applicable Rate Rule

Union's request that, when employee's normal work assignment overlaps two or more classifications, he should be paid rate for highest classification is denied. As proposed by company, when it can be shown that such work assignment overlaps two or more classified occupations, employee's classification may be submitted to grievance procedure.—Bell Aircraft Crop., 26 War Lab. Rep. 412.

275.500 Job Rates for Transferees Within Plant

Employee assigned to higher job classification should receive not less than minimum rate of pay for higher classification. Employee may be assigned to classification with lower pay only if (1) he is unable to meet requirements of present job, (2) sufficient work is not available in present job, or (3) change is made at employee's request.—Bell Aircraft Corp., 26 War Lab. Rep. 412.

West Coast Lumber Commission

Lumber pilers assigned to lower-rated jobs should receive rate of pay for such lower-rated jobs when assignment is made for convenience of employees. Order is within intent of parties' contract, which provides that company may, with their consent, transfer employees to lower-rated job in lieu of layoff and pay them at rate of position to which transfer is made. (West Coast Lumber Commission) —McGoldrick Lumber Co., 26 War Lab. Rep. 216.

285. WAGES—MINIMUM RATES

285.400 Increase in Minimum Rates

285.410 —Cost-of-living adjustment

Newspaper Commission's order denying union's request for application of increase due under Little Steel formula to all minimum rates but granting increase in one classification and modifying minimum rates for several other classifications is affirmed. Commission is requested, however, to examine question of raising contract minima in light of Board decisions made subsequent to date on which Commission's order was issued and in light of any changed circumstances since case was considered by Commission.—New York Herald-Tribune, 26 War Lab. Rep. 18.

295. WAGES—SUBSTANDARD RATES

295.200 Elimination of Substandard Rates

Hospitals should establish specified minimum job rates and should deduct from wages no more than specified amounts for value of room and meals furnished to employees where Regional Board so directed on ground that order corrected substandard rates below 50 cents an hour and represented conservative application of going rates applicable to similar occupations in other industries.—New York Hospitals, 26 War Lab. Rep. 438.

★ Company should increase minimum hourly rate from 47 to 55 cents to eliminate substandards.—Texas Mining & Smelting Co., 26 War Lab. Rep. 480.

Region VIII (Dallas)

Laundry employees are entitled to general eight-cent increase requested by union to correct substandards and maintain intra-plant differentials, such increase bringing minimum rate up to 40 cents an hour and being made retroactive to expiration date of prior contract. Contention that present wage level is already above level supportable by laundry industry generally in region and that, therefore, award is harsh and unrealistic is rejected since award is clearly justified under substandards policy and it is against WLB policy for Board to consider ability to pay. (Region VIII—Dallas)—Galveston Model Laundry et al., 26 War Lab. Rep. 224.

29.260 —Correlative adjustments above substandard level

★ Company should increase minimum hourly rate from 47 to 55 cents to eliminate substandards and should increase all higher rates by 8 cents per hour rather than by tapered amounts since very narrow differentials exist among interrelated job classifications. Regional Board's order establishing 50-cent minimum rate and tapered correlative adjustments is modified accordingly. Case is also remanded to Regional Board for any further action justified by case's having been certified as rare and unusual one.—Texas Mining & Smelting Co., 26 War Lab. Rep. 480.

295.600 Substandard Rates as Ground for General Increase

Region III (Philadelphia)

Hourly wage rates for all job classifications of restaurant employees in five department stores are raised by 2½ cents per hour under Board's authority to eliminate substandards where some rates are substandard and general increase rather than tapered adjustments is indicated by intra-plant considerations. Aggregate amount awarded equals aggregate which would have been required to establish minimum standard rate of 55 cents for all non-tipped employees and rate of 45 cents for those receiving tips and meals. (Region III—Philadelphia)—Labor Standards Assn., 26 War Lab. Rep. 231.

297. WAGES—TRANSITION ADJUSTMENTS

★ To correct maladjustments and inequities which would interfere with effective transition to peacetime economy, merchant seamen are entitled to general wage increase of 45 dollars per month to be effective from date of elimination of wartime "voyage bonus" which averages 53 dollars per month. Although "main assumption" of Board in determining date and amount of increase is elimination of wartime bonus, Board's decision is based on all equities of case, including those arising out of substandard wages, overtime, and other contentions of unions.—Maritime Cases, 26 War Lab. Rep. 509.

300. WAGES—TRAINEE RATES

300.250 Elimination of Trainee Rates

Regional Board's order eliminating beginners and learners rates is remanded with instruction that hearing be held on

merits of issue. Company contends that it was never given opportunity to be heard on merits.—Laclede Steel Co., 26 War Lab. Rep. 438 (*remanding* 23 War Lab. Rep. 595).

330. WORKING CONDITIONS

330.001 In General

★ Employers' request is refused for following changes in working conditions to promote greater efficiency in longshoring: (1) restoration of "steady gangs" to take place of "casual gangs" when requested by employer, (2) authorization for each employer to assign men to jobs without regard to work for which they were dispatched, and (3) requirement of daily reporting by longshoremen at port hiring halls.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

★ In organization of work gangs of longshoremen, standard gangs should uniformly consist of ship gangs only, consitiution of ship gangs should follow present practice, and all gangs larger than standard and all longshoremen who are not members of regular gangs should be dispatched only as ordered by employer.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

★ Union's request that company be prevented from requiring assignment of inventions developed by employees during their course of employment is denied where company contends that (1) employees are compensated for inventions accepted and (2) company provides full facilities and background for inventions and pays employee's wages during developmental work.—Douglas Aircraft Co., Inc., 26 War Lab. Rep. 492.

330.400 Patent Rights

330.600 Safety and Health Regulations

★ Board denies union's request for mandatory safety code, to be decided by union-management committee in absence of agreement between parties, where employers have accident prevention bureau which has resulted in decrease in disabling injuries and, in view of unsatisfactory labor relations of parties, more harm than good might result from union proposal.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

330.900 Workload Change

★ Employers' request for abolition of maximum sling load limits for longshoremen is denied but parties should renegotiate maximum limits for items presently listed where employers contend that load limits in effect have curtailed production. Proper limitation on size of load is measure of fair day's work which will avoid disputes and prevent undue speed or shirking.—Waterfront Assn., 26 War Lab. Rep. 514.

330.920 Work Rules

Company should discontinue present practice of requiring employees to compute their own daily earnings, except that workers should maintain production record on form supplied by company, where union contends that (1) practice leads to confusion and disputes, (2) calculation of pay is function of management, and (3) present time allowance of five minutes is inadequate to cover time required for complicated calculations.—Firestone Rubber & Metal Products Co., 26 War Lab. Rep. 1.

Board affirms those parts of Regional Board's status quo order which (1) required company to reinstate both those employees who were suspended for violating shop rule effective in plant involved but not in plant from which they had recently been transferred and those employees who quit in sympathy and (2) permitted company to require that all reinstated employees observe disputed shop rule pending final disposition of dispute. Board, however, vacates that part of Regional order which (1) held that company had violated Regional Board's preliminary status quo order by making reinstatement of newly transferred employees conditional upon observance of shop rule and (2) ordered company to grant back pay to such employees for days lost between preliminary and final status quo orders.—General Motors Corp., 26 War Lab. Rep. 53.

Immediate submission to umpire under contract is required as to any question concerning disciplinary action taken by company against (1) employees who were suspended for violating shop rule and (2) employees who walked out in sympathy with suspended employees. Umpire may consider application of rule under all circumstances of case which include fact that rule was not in effect in plant from which suspended employees had been recently transferred. Union may present to umpire question as to whether and to what extent union has right under existing contract to negotiate subject of shop rules.—General Motors Corp., 26 War Lab. Rep. 53.

★ Longshoremen engaged in a job assignment who fail to report and do not give union sufficient notice to permit union to obtain replacements shall pay

fine to labor-management committee within 30 days from date of offense to avoid having name struck from registration list maintained at hiring hall. In event of failure to report or obtain replacement three times in any contract year, loss of registration shall be mandatory, reconsideration to be permitted only if offense was entirely beyond control of gang member.—Waterfront Employers Assn., 26 War Lab. Rep. 514.

★ Contract providing for establishment or longshoremen of standard working and dispatching rules by coast labor relations committee and by arbitration if committee is unable to agree is amended to provide that all local port dispatching, working and safety rules shall remain in effect until superseded by mutual consent, since, after Board has issued its directive order on employers' demands, neither party should have privilege of seeking another decision before a different tribunal.—Waterfront Employers Assn., 26 War Lab. Rep. 514.